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14 Attorneys for Petitioner
15 AMERIPRIDE SERVICES INC.

16 BEFORE THE STATE WATER RESOURCES CONTROL BOARD

17 In Re: PETITION OF AMERIPRIDE
18 SERVICES INC. FOR REVIEW OF
19 CLEANUP AND ABATEMENT ORDER NO.
20 R5-2006-0530

21 **PETITION FOR REVIEW**

22 Water Code § 13320

23 California Regional Water Quality Control
24 Board, Central Valley Region, Order No. R5-
25 2006-0530

26 Petitioner AMERIPRIDE SERVICES INC. ("AmeriPride" or "Petitioner"), by and
27 through its counsel of record, Stoel Rives LLP, hereby requests review by the State Water
28 Resources Control Board ("State Board") of certain provisions of Cleanup and Abatement Order
No. R5-2006-0530 (the "Order"), issued by the Regional Water Quality Control Board, Central
Valley Region ("Regional Board") staff, pursuant to Water Code section 13320 and 23 Cal. Code
Regs. §§ 2050 *et seq.* Despite requests by the alleged Discharger, Regional Board staff issued the
Order without first holding a public hearing; thus, there is no hearing transcript.¹

¹ Petitioner sent written requests to the Regional Board on August 30, 2006 and September 26, 2006 requesting a hearing on this Order. In addition, during a meeting with the Regional Board held on August 15, 2006, Petitioner verbally requested that the Regional Board hold a public hearing before issuing the Order. Via letter dated October 5, 2006, the Regional Board granted

1 This Petition for Review ("Petition") expressly refers to and incorporates herein the prior
2 Petition for Reconsideration filed by AmeriPride on May 27, 2003, and supplemented on June 17,
3 2003, relating to Order No. R5-2003-0059, and the subsequent Petition for Writ of Mandate filed
4 in Sacramento Superior Court (Case No. 04CS00426), because the actions and omissions of
5 Regional Board staff violated the settlement agreement reached in November 2005 in response to
6 Petitioner's administrative and judicial challenges of Order No. R5-2003-0059.²

7 Concurrently with the filing of this Petition, Petitioner requests that the Petition be held in
8 abeyance pursuant to 23 Cal. Code Regs. section 2050.5(d) pending a mediation currently
9 scheduled for November 6-7, 2006.³ Petitioner reserves the right to supplement and/or augment
10 the Petition and the Points and Authorities contained herein if the State Board does not grant
11 Petitioner's request for abeyance, or should the Petition be removed from abeyance in the future.

12 **I. NAME AND ADDRESS OF PETITIONER**

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16 Minnetonka, MN 55305
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17 By and through its attorneys of record:
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22 Petitioner's final request for a hearing on the Order and placed the Order on the meeting agenda
23 for the Regional Board meeting currently scheduled for December 7-8, 2006.

24 ² To the extent that the Regional Board has breached its settlement agreement with AmeriPride
25 reached in November 2005, a term of which was AmeriPride relinquishing its right to challenge
26 the resulting cleanup and abatement order issued in December 2005 (Order No. R5-2005-0721)
("2005 Order"), AmeriPride expressly reserves its right - which materialized upon the Regional
Board's breach of the settlement - to challenge the 2005 Order.

27 ³ In addition, Petitioner filed a Request for Stay of certain provisions of Order No. R5-2006-0530
28 with the State Board concurrently with the filing of this Petition.

1 **II. ACTIONS BY THE REGIONAL BOARD THAT PETITIONER REQUESTS THE**
2 **STATE BOARD REVIEW.**

3 AmeriPride owns an industrial laundry in South Sacramento. The laundry facility has
4 been operated by various owners since the mid-1960s. Prior owners of the industrial laundry
5 engaged in dry cleaning operations at the site. During construction in 1997, Petitioner discovered
6 a contaminant plume at the site. The plume has generated several lawsuits, including one by
7 Huhtamaki Foodservice, Inc. (“Huhtamaki”) related to its downgradient groundwater wells.

8 AmeriPride is herein requesting review of portions of Cleanup and Abatement Order
9 (“CAO”) No. R5-2006-0530 (the “Order”) adopted by the Regional Board on September 8, 2006,
10 a copy of which is attached hereto as **Appendix A**. The Order relates to the AmeriPride site
11 located at 7620 Wilbur Way in Sacramento, California. Because of the implied retraction of the
12 2005 Order by Board staff via both the express language of the new Order and as noted in
13 correspondence from Board staff dated September 8, 2006, AmeriPride herein challenges the
14 Board’s breach of the November 2005 settlement agreement and, by implication, reasserts its
15 objections and challenges to the original 2003 Order.

16 **III. THE DATE ON WHICH THE REGIONAL BOARD ACTED.**

17 The Executive Officer of the Regional Board executed Order No. R5-2006-0530 on
18 September 8, 2006, without the benefit of a public hearing.

19 **IV. STATEMENT OF REASONS WHY ACTION WAS IMPROPER.**

20 A number of actions taken by Regional Board staff were not based on substantial evidence
21 in the record and/or were contrary to law, which constitutes an abuse of discretion. Moreover,
22 portions of the Order and the process by which the Regional Board adopted the Order without
23 benefit of a public hearing violate Petitioner’s due process rights. Among other reasons, the
24 Order is fundamentally unfair and not supported by sufficient evidence in that it requires
25 AmeriPride to pay for Huhtamaki’s interim water, which is limited to Huhtamaki’s actual current
26 water usage, yet contains a requirement that AmeriPride install two “replacement” wells, which
27 will have the capacity to provide Huhtamaki with approximately four times the amount of water
28 that Huhtamaki is currently using.

1 **A. Regional Board Staff Adopted the Order Without First Holding a Public**
2 **Hearing Before the Board, Denying AmeriPride its Right to Due Process.**

3 Although AmeriPride was allowed to comment on a draft Order,⁴ a number of significant
4 changes and additions were made to the final Order that were not included in the draft version of
5 the Order. A copy of the draft Order circulated for review and comment is attached hereto as
6 **Appendix B.** The final Order contains deadlines that commenced one week after the effective
7 date of the Order (September 8, 2006 was the effective date of the Order; the first compliance
8 deadline was September 15, 2006). Therefore, the Regional Board effectively precluded
9 Petitioner from having sufficient time to comment on the Order and effectively appeal its
10 contents, which are constitutional and statutory rights that Petitioner enjoys.

11 **B. The Order Contains a Time Schedule For Completion of Tasks that the**
12 **Regional Board Knew Petitioner Could Not Meet.**

13 The first compliance date in the Order is September 15, 2006, a mere week from the
14 purported effective date of the Order. The first compliance date occurs prior to the statutorily-
15 allotted time period for administrative appeal of the Order, further injuring AmeriPride's due
16 process rights. The Regional Board is well aware that Huhtamaki has continuously impeded
17 Petitioner's ability to gain access to the Huhtamaki site, and now Petitioner is required to provide
18 interim water due in part to Huhtamaki's own actions that have rendered it impossible for
19 Petitioner to adhere to the Order's schedule regarding installation of a replacement well. Such
20 interference was documented in prior correspondence by AmeriPride, which is part of the
21 administrative record and is therefore incorporated herein.⁵ By setting immediate inflexible
22 deadlines, the Order prevents any public hearing before either the Regional or State Board from
23 occurring before the Order's first compliance deadline, making it difficult, if not impossible, for
24 Petitioner to meet the deadlines contained in the Order.

25 ⁴ The Regional Board circulated a draft Order to AmeriPride, Huhtamaki, and other interested
26 parties for comment on June 28, 2006.

27 ⁵ See, e.g., letter from AmeriPride's counsel to the Regional Board re: AmeriPride's Legal
28 Comments on Draft CAO (Sept. 1, 2006), a copy of which is attached hereto as **Appendix C**
(without noted exhibits).

1 **C. The Order's Provisions Relating to the Volume of Water Petitioner is**
2 **Required to Provide to Huhtamaki are Contradictory and are Unsupported**
3 **in Fact or by Law.**

4 The Order contemplates that Petitioner and Huhtamaki will mediate their positions
5 regarding replacement water, yet it unnecessarily and unreasonably sets a potential floor on the
6 quantity of water that must be provided (1500 gallons per minute ("gpm")) for two replacement
7 wells. (Order at page 15, Item 5.) In fact, the requirement that two wells each with a capacity of
8 1500 gpm is not supported by the evidence in the record. In addition, the Regional Board inserted
9 language earlier in the Order referencing an August 15, 2006 meeting with Regional Board staff
10 whereby Petitioner and Huhtamaki agreed to mediate a settlement agreement regarding adequate
11 water supply replacement. (Order page 9, Item 47.) The Order "requires the mediation to reach
12 agreement as to quality and quantity, responsibility for risk, and the method of replacement by
13 October 15, 2006. If, by October 15, 2006, the mediation is unsuccessful, AmeriPride must
14 comply with the requirements for water replacement in this Order." (*Id.*) The provision setting a
15 floor for quantity of replacement water and the mediation language quoted above is contradictory
16 and hence fundamentally unfair. The Regional Board's inclusion of a minimum quantity of water
17 in the Order undermines the purpose of mediating disputes and eviscerates the provisions in the
18 Order that not only allow, but support, mediation, which is also a protected right under Water
19 Code section 13304(g). AmeriPride therefore objects to the amount of replacement water
20 prescribed by the Order, as it undermines AmeriPride's statutory right and it provides Huhtamaki
21 with far more water (approximately four times) than it is currently using.

22 Moreover, the Regional Board's specific requirement of the manner in which Petitioner is
23 to comply with the Order's provisions requiring Petitioner to supply Huhtamaki with replacement
24 water is inconsistent with Water Code section 13360⁶ and hinders the parties' ability to freely

25 _____
26 ⁶ Water Code section 13360 provides "No waste discharge requirement or other order of a
27 regional board or the state board or decree of a court issued under this division shall specify the
28 design, location, type of construction, or particular manner in which compliance may be had with
that requirement, order, or decree, and the person so ordered shall be permitted to comply with
the order in any lawful manner."

1 mediate their disputes, as allowed by Water Code section 13304.⁷ As noted above, the Order
2 requires that each replacement well shall have a capacity of 1500 gpm, which not only completely
3 undermines Petitioner's right to mediate replacement water claims, but also violates the express
4 language of Water Code section 13360 wherein the Board is prohibited from prescribing the
5 means or method by which a discharger is to comply with an Order.

6 Lastly, the Order requires that Petitioner provide Huhtamaki with the actual cost to
7 purchase interim replacement water supplies effective September 15, 2006 (Item 51, page 10).
8 This provision requires Petitioner to provide Huhtamaki with only the cost to provide replacement
9 water in an amount that Huhtamaki is actually currently using. This requirement contradicts the
10 additional provision that Petitioner is to provide replacement water supplies in the form of two
11 wells and a backup supply that meets or exceeds 3000 gpm, well over four times the amount of
12 water that Huhtamaki is currently using at its Sacramento facility. Thus, the Regional Board has
13 failed to consistently define the term "replacement water" within the Order, which is contrary to
14 law and constitutes an abuse of discretion.

15 **D. The Order is a Clear Breach of the Mediated Agreement Between the**
16 **Regional Board and Petitioner.**

17 Under the terms of the settlement reached in November 2005 between Petitioner and the
18 Regional Board, Petitioner agreed to dismiss its pending lawsuit and to not disagree to undertake
19 certain remedial measures. As a result of the mediation, the Regional Board agreed to issue a
20 revised CAO. The measures that Petitioner agreed to carry out were incorporated into the revised
21 CAO, Order No. R5-2005-0721 (Dec. 21, 2005) ("2005 CAO" or "revised CAO"), and were then
22 carried over to the Order at issue. To the extent possible, AmeriPride has complied with the
23 terms of the revised CAO. Except in the instance where Huhtamaki has been an obstacle, the
24 deadlines contained in the revised CAO have been met. AmeriPride conveyed evidence of
25 Huhtamaki's interference to the Board via correspondence of September 1, 2006 and the
26

27 ⁷ Water Code section 13304(g)(3)⁷ prevents the parties from agreeing on *anything* related to
28 replacement water claims that is contrary to the Order.

1 attachments thereto, which chronicled Huhtamaki's failure to allow AmeriPride access to
2 Huhtamaki's property in a timely manner.

3 **E. The Regional Board's Authority Does Not Allow it to Require Both Damages**
4 **and Abatement.**

5 The Regional Board does not have the authority to require damages (interim water
6 supplies and replacement water) let alone both damages and abatement.⁸ Petitioner should only
7 be required to provide replacement water for a direct use, and only then until the contamination is
8 abated. Under the terms of the Order as drafted, the replacement water provision requiring two
9 replacement wells effectively constitutes damages. The Board should not order "damages"
10 because Huhtamaki will be unjustly enriched by receiving two new wells to replace a single forty
11 year-old well; nor does AmeriPride have the opportunity to demonstrate the windfall that
12 Huhtamaki will receive from the new wells, as well as the cleanup (abatement) of the
13 contamination. Therefore, to the extent Huhtamaki is unjustly enriched by the replacement of a
14 single forty year-old well with two new wells, Huhtamaki should be required to compensate
15 AmeriPride, or the cost of the replacement well should be offset by the amount that Huhtamaki is
16 unjustly enriched.

17 **F. The Order Reflects the Inconsistent Position of the Regional Board Regarding**
18 **Which Earlier CAO, Order No. R5-2003-0059 or Order No. R5-2005-0721,**
was Previously in Effect.

19 For the first time in the final Order,⁹ the Regional Board has taken the position that the
20 2005 CAO is not in effect and was rendered moot as such on January 19, 2006, the date that
21 Huhtamaki filed a Petition for Reconsideration and Stay with the State Board. The Regional
22 Board has clearly taken inconsistent positions with respect to the effect of the 2005 CAO, most
23 recently evidenced by the terms of the draft Order contrasted to the terms of the final Order at
24 issue herein. If the Regional Board's position is that the 2005 CAO is not in effect and has not

25 ⁸ Petitioner hereby again incorporates by reference the arguments and information contained in
26 and relied upon in its Petition for Reconsideration and Stay filed with the State Board on May 27,
2003, as well as the supporting Memorandum of Points and Authorities in Support of Petition for
Reconsideration and Stay, filed with the State Board on June 17, 2003.

27 ⁹ AmeriPride was never given the opportunity to argue this point because this language was not in
28 the prior draft CAO (issued June 28, 2006) and no public hearing was held.

1 been in effect since Huhtamaki filed a Petition for Reconsideration and Stay of the 2005 CAO,
2 then the Regional Board should not be able to rely on the time limits and the schedule set forth
3 therein in the Order at issue. The language of the Order in part ignores the 2005 CAO, but then
4 relies in part on the deadlines and the content of the 2005 Order.

5 By its own actions, in the new Order the Regional Board continues to rely on the
6 settlement agreement by including terms of the settlement, such as compliance deadlines and
7 remediation requirements, which were specifically incorporated into the 2005 CAO as part of the
8 settlement. The 2005 CAO was expressly intended to be a reflection of the settlement between
9 Petitioner and the Regional Board that was negotiated and agreed to in November 2005. (*See Part*
10 *IV.D, supra.*) The 2005 CAO did not require Petitioner (AmeriPride) to provide Huhtamaki with
11 interim water supplies, as that requirement was not part of the settlement agreement between the
12 parties. In addition, the provision contained in the 2005 CAO, which noted that prior orders are
13 rescinded only if there is no petition filed with the State Board, is fundamentally unfair to
14 Petitioner, as construed by the Regional Board in the new Order at issue herein.

15 The State Board's February 10, 2006 letter denying Huhtamaki's Request for Stay noted
16 that such a request was moot because Huhtamaki "filed a petition to the State Water Board
17 challenging the [2005 CAO], it appears that the prior CAO is not rescinded and is still in effect . .
18 . . Because the action being challenged is not currently in effect, a stay of that action is
19 unnecessary." (*See State Board's Letter to counsel for Huhtamaki regarding Petition for*
20 *Reconsideration and Request for Stay (Feb. 10, 2006).*) Nonetheless, once the State Board
21 dismissed Huhtamaki's Petition for Reconsideration (via letter dated April 28, 2006), the 2005
22 CAO became effective again. By unilaterally allowing Huhtamaki the right to petition the 2005
23 CAO and expressly disallowing Petitioner from doing the same in the text of the 2005 CAO (Item
24 40), the Regional Board rendered the settlement agreement with Petitioner moot. Thus, inclusion
25 of the provision stating that filing of a petition will reinstate older orders constitutes a "chilling
26 effect" on Petitioner's statutory right to appeal the Order and violated principles of due process
27 and fundamental fairness. Further, it is AmeriPride's understanding that Item 40 was included
28 only to apply in the event that AmeriPride breached the settlement agreement by challenging the

1 2005 CAO, which AmeriPride expressly agreed not to do. However, AmeriPride did not breach
2 the agreement and did not challenge the 2005 Order. AmeriPride should not now be penalized for
3 adhering to the terms of the settlement agreement.

4 The Regional Board's interpretation of a similar provision contained in the Order at issue
5 herein differs from the position of the Regional Board in the draft Order (Item #46). Coupled
6 with the Regional Board's reliance on various aspects of the 2005 CAO, this demonstrates that
7 the 2005 CAO was in effect from, at least, April 28, 2006 to September 8, 2006, the date on
8 which the Order at issue herein was issued by the Regional Board. The Regional Board is now
9 taking the position, however, that the 2005 CAO was not in effect during that time, which clearly
10 constitutes a breach of the November 2005 settlement agreement between Petitioner and the
11 Regional Board.

12 **G. Evidence in the Record Demonstrates that the Volume of Water Petitioner is**
13 **Required to Provide to Huhtamaki Should Be Far Less Than is Required by**
14 **the Order.**

15 For the following reasons, the amount of water that Petitioner should be required to
16 provide to Huhtamaki, if any, should be far less than what the Order requires:

- 17 • The quantity of water required should be based on Huhtamaki's actual usage at the
18 time that the wells were determined to be contaminated. The 1500 gpm
19 requirement in the Order is not supported by the evidence in the record. Given
20 Huhtamaki's average current usage, which is closer to 500-750 gpm from one
21 well, the requirement for 3000 gpm to be supplied by two water supply wells is
22 approximately four times the amount Huhtamaki currently uses.
- 23 • The Regional Board should allow Petitioner to rely on treated water from operable
24 unit 3 ("OU-3") (180-270 gpm) as a backup water supply. Otherwise, the
25 Regional Board is in violation of Water Code section 13360.
- 26 • The evidence in the record demonstrates that Huhtamaki's Chinnet well #2 has
27 never been operated, yet the Order requires Petitioner to provide a well to replace
28 Chinnet #2.

1 **H. The Order Relies on Factually Incorrect Information.**

2 There are factual errors contained in the Order. Petitioner requests that the Order be
3 revised as follows:

- 4 • Item #15: The Order states that in August 2001, Huhtamaki “changed its water
5 system so that drinking water in the plant was supplied by a municipal source and
6 the well water was used only as process water.” This is not accurate. Huhtamaki
7 first switched from using its well water for drinking water to bottled water, then
8 switched to a municipal water supply in October 2002, fourteen months after PCE
9 was detected in Chinet #1.
- 10 • Item #15: The Order reads that the “concentration of PCE in [Chinet #1] has
11 continually increased since PCE was detected.” Again, this is not accurate.
12 Huhtamaki ceased using Chinet #1 in October 2002 when the PCE levels in the
13 well were 2.9 µg/L. However, sampling results taken by Huhtamaki from October
14 2002 through March 18, 2003 (prior to the time Huhtamaki ceased well sampling)
15 demonstrate that the concentration of PCE in the well decreased after Huhtamaki
16 ceased pumping the well.
- 17 • The latter half of Item #62, under the heading “Discharger Liability,” was not
18 included in the draft Order and therefore Petitioner did not have adequate
19 opportunity to respond to this inflammatory statement. Furthermore, there are no
20 facts in the record supporting this statement. This language should be removed
21 and stricken from the Order: “The Discharger purchased the site in 1983 and
22 knew, or should have known, at the time that PCE had been used in large
23 quantities by its predecessor at the site, a large commercial laundry/dry cleaning
24 operation. The Discharger owns the property, has knowledge of the contamination
25 and the ability to control the VOC plume. In addition, AmeriPride discharged
26 PCE in its wastewater, whether or not it used PCE in its operations.” This
27 language is an invalid unsupported factual finding, presumes facts not before the
28 Regional Board, and incorrectly implies that the mere presence of PCE in

1 AmeriPride's wastewater means that AmeriPride discharged wastewater to the soil
2 and groundwater. AmeriPride has properly discharged and continues to properly
3 discharge wastewater to the sewer at its facility pursuant to the terms of a
4 discharge permit issued by the Sacramento Regional County Sanitation District.

- 5 • On page 15 of the Order, Item #5 is ambiguous and contrary to law, pursuant to
6 Water Code section 13360. Water Code Section 13360 states that the Board
7 cannot specify design, location or particular manner in which compliance with the
8 Order may be had. Next, item #5 of the CAO reads: "AmeriPride shall install two
9 wells which supply replacement water of comparable quality and quantity to that
10 provided by the Chinnet #1 and Chinnet #2 wells, or another alternative replacement
11 system, including a back up supply or monetary compensation for a replacement
12 system. Each replacement well shall be capable of supplying 1,500 gallons per
13 minute." The language is ambiguous in that it is not clear whether two
14 replacement wells and a backup supply are required, or if a backup supply is only
15 required as part of an alternative replacement system. Moreover, the requirement
16 that Petitioner provide two replacement wells and a backup water supply is
17 contrary to the concept of replacement water and the law of continuing versus
18 permanent nuisance.
- 19 • There is not substantial evidence in the record to support the Regional Board's
20 statements or inferences that PCE was released by prior owners or from
21 Petitioner's sewer lines/wastewater flows. All language alluding to such releases
22 (or expressly indicating that such releases occurred) should be deleted from the
23 Order.
- 24 • Under the terms of the Order, if it is discovered that other wells are contaminated,
25 Petitioner would be required to provide replacement water (Item #7, page 15).
26 Regarding future use, the amounts that may be needed in the future are completely
27 unknown and purely speculative. Potential impacts to other water supply wells are
28 beyond the scope of the Order. Inclusion of this requirement is prejudicial to

Petitioner and is fundamentally unfair, as it does not allow Petitioner to assert defenses to the position of the Regional Board.

- Item #9, page 10; Item #6, page 15: Huhtamaki is not a party to the Order and therefore is not bound by the terms of the Order. Therefore, Huhtamaki has no incentive to reasonably participate in mediation with AmeriPride, to provide AmeriPride access to its site in a timely fashion, or to provide timely and reasonable comments on documents and reports that the Order requires Petitioner to prepare, all of which involve express deadlines in the Order that AmeriPride alone must adhere to and, if it fails to do so, could render it susceptible to civil penalties. Huhtamaki's actions or inactions should not have the effect of rendering AmeriPride out of compliance with the terms or substance of the Order. Further, since Huhtamaki is not a named party to the Order, nor is Huhtamaki contributing to the cleanup, Huhtamaki should not be allowed to "approve" or "disapprove" of any documents or reports that the Order requires AmeriPride to prepare. In fact, Huhtamaki should be precluded from impeding Petitioner's statutorily and constitutionally protected right to appeal the Order and/or to work with the Regional Board in negotiating the terms of the Order.

V. THE MANNER IN WHICH PETITIONER IS AGGRIEVED.

Petitioner is required to comply with portions of an Order that are contrary to law, not based on substantial evidence in the record, and/or beyond the scope of the Regional Board's authority, as well as are contrary to prior settlement agreements and were not subject to due process. Moreover, the requirements to provide replacement water and interim water supplies to Huhtamaki is a form of damages. For these reasons, Petitioner is aggrieved. By requiring Petitioner to provide Huhtamaki with interim water and replacement water, in addition to requiring Petitioner to abate the contamination, provides Huhtamaki with double recovery. The scope and substance of such double recovery exceed the Regional Board's authority.

Even if providing replacement water supplies and an interim water supply is within the authority of the Regional Board, the Board acted improperly as there is insufficient evidence to

1 support the Board's decision. In fact, substantial evidence exists that is contrary to the provisions
2 in the Order and the law regarding replacement water, among other provisions of the Water Code
3 as set forth herein.

4 Furthermore, the provisions of the Order violate the November 2, 2005 settlement
5 between Petitioner and the Regional Board that occurred during mediation of the first CAO
6 issued by the Regional Board to Petitioner in this matter, Order No. R5-2003-0059. The Regional
7 Board's failure to adhere to the November 2, 2005 settlement agreement constitutes a failure to
8 follow the law, and failure to adhere to the provisions as agreed upon by the Petitioner and the
9 Regional Board in settlement, as those provisions were addressed and included in the 2005 CAO.

10 **VI. THE SPECIFIC ACTION BY THE STATE BOARD OR REGIONAL BOARD**
11 **THAT PETITIONER REQUESTS.**

12 Petitioner respectfully requests that the State Board do the following:

- 13 1. Stay implementation and enforcement of the Order until the legal issues can be
14 heard, and the parties can attempt mediation;
- 15 2. Remove the Regional Board's requirement that AmeriPride pay for interim water
16 supplies effective September 15, 2006;
- 17 3. Revise the Regional Board's requirement that AmeriPride shall provide
18 Huhtamaki with two replacement wells each with a capacity of 1500 gpm;
- 19 4. Find that certain provisions of the Order are not supported by substantial evidence;
- 20 5. Find that the Regional Board's findings are insufficient to support the Order;
- 21 6. Reinstate the 2005 Order as it relates to settled issues;
- 22 7. Place this Petition in abeyance until the legal issues are resolved by mediation; and
- 23 8. Conduct or require that the Regional Board conduct a public hearing regarding the
24 provisions of the Order.

1 **VII. STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL**
2 **ISSUES RAISED HEREIN.**

3 Petitioner contends that the portions of the Order discussed in Part IV, *supra*, are not
4 based on substantial evidence in the record, are contrary to law, and constitute an abuse of
5 discretion by the Regional Board, as well as violate Petitioner's due process rights.

6 **A. Standard of Review.**

7 Pursuant to Water Code section 13320(c), the State Board may find that the actions of the
8 Regional Board were inappropriate or improper. (Water Code § 13320(c).) Upon finding that the
9 actions of the Regional Board were inappropriate or improper, the State Board may direct that the
10 appropriate action be taken by the Regional Board, refer the matter to any other state agency
11 having jurisdiction, take the appropriate action itself, or take any combination of those actions.
12 (*Id.*)

13 **B. Actions Taken by the Regional Board Must Be Based on Substantial Evidence**
14 **in the Record.**

15 In determining whether an action of the Regional Board was appropriate and/or proper,
16 the State Board must weigh whether there was substantial evidence in the record, taken as a
17 whole, to support the Regional Board's action. (*See, e.g., In re Ventura County Citizens to Stop*
18 *Towland Landfill*, Order No. WQ 98-02 (Apr. 16, 1998).) Under the substantial evidence
19 standard of review, the reviewing entity regards the weight and sufficiency of evidence submitted
20 regarding matters of administrative discretion and will sustain an agency's decision if substantial
21 evidence supports the decision. (*Floresta, Inc. v. City Council of San Leandro*, 190 Cal. App. 2d
22 599, 608-09 (1961).)

23 **C. AmeriPride's Right to Appeal is Constitutionally Protected.**

24 Petitioner's right to pursue administrative appeals is expressly allowed under California
25 law and is protected by the state Constitution. (*See, e.g., De Anza Santa Cruz Mobile Estates*
26 *Homeowners Ass'n v. De Anza Santa Cruz Mobile Estates*, 94 Cal. App. 4th 890 (2001);
27 *Matossian v. Fahmie*, 101 Cal. App. 3d 128 (1980); Cal. Water Code §§ 13320(a), 13330; 23 Cal.
28 Code Regs. § 2050.) The right to file an appeal implicates due process considerations, "to the
extent that tort damages are based on evidence that a defendant filed motions, appeals and other

1 legal proceedings during the course of litigation, or opposed motions filed by the other party.”
2 (*De Anza*, 94 Cal. App. 4th at 918 (internal citations omitted).) Moreover, “[t]he right to petition
3 for redress of grievances is a basic right guaranteed by the state and federal constitution [and a]
4 person’s right of access to judicial and quasi-judicial bodies to decide controversies is a
5 fundamental component of our society and cannot be impaired by the threat of punishment or
6 retaliation.” (*Id.* at 919 (citing *California Teachers Assn. v. State of California*, 20 Cal. 4th 327,
7 339, 356 (1999)).)

8 AmeriPride is acting fully within its protected rights in filing this Petition seeking review
9 of the Order. The Regional Board imposition of compliance deadlines that fall within one week
10 of the effective date of the Order, well within the 30-day period Petitioner has to file this
11 administrative appeal, is fundamentally unfair and violates Petitioner’s due process rights.

12 As noted above, Petitioner respectfully reserves the right to augment the Petition and the
13 Points and Authorities contained herein if the State Board does not grant Petitioner’s request for
14 abeyance, or should it be removed from abeyance in the future at the request of Petitioner.

15 **D. The Regional Board’s Actions were Not Based on Substantial Evidence in the**
16 **Record, are Contrary to Law, and Violate Petitioner’s Due Process Rights**

17 In summary, the portions of the Order that AmeriPride wishes the State Board review are
18 as follows:

- 19 • Failure to provide AmeriPride due process right to a public hearing.
- 20 • The Order contains a schedule for completion of tasks that the Regional Board
21 knows cannot be met. This action is contrary to law, violates Petitioner’s due
22 process rights as noted above, and constitutes an abuse of discretion.
- 23 • As noted in the Order itself (Order at p. 3, Item 14), the volume of water Petitioner
24 is required to provide to Huhtamaki is based on only two discrete measurements of
25 water usage, both of which are over 12 years old. Data demonstrate that on
26 average, Huhtamaki currently uses no more than 750-800 gpm of water per month.
27 Thus, the Regional Board’s determination that Petitioner is required to provide
28 Huhtamaki with two replacement wells, each with a 1500 gpm capacity, is not

1 based on substantial evidence. In fact, the weight of the evidence in the record
2 demonstrates that the amount of replacement water required under the Order
3 should be no more than 800 gpm.

- 4 • The Regional Board improperly and unlawfully relies on the April 2003 CAO,
5 Order No. R5-2003-0059. The more recent 2005 CAO, Order No. R5-2005-0721,
6 remained in effect until September 8, 2006. The 2005 CAO, however, did not
7 contain requirements for the provision of interim water supplies. Therefore, the
8 Regional Board's inclusion of the requirement that Petitioner provide Huhtamaki
9 with interim water supply is not based on substantial evidence in the record. In
10 fact, the requirement is contrary to law and constitutes a breach of the November
11 2005 settlement between Petitioner and the Regional Board.
- 12 • Provisions of the Order breach the agreement between the Regional Board and
13 Petitioner, agreed upon during mediation on November 2, 2005, specifically
14 reflected in the 2005 CAO. Thus, the Regional Board acted contrary to law and
15 abused its discretion in issuing the Order.
- 16 • Pursuant to the settlement agreement, the Regional Board should be estopped from
17 ordering anything that is contrary to the provisions of the 2005 CAO.
- 18 • The Regional Board failed to include water from OU-3 (approximately 180-
19 270 gpm) as a valid backup supply for Huhtamaki in the Order. According to
20 Water Code section 13360, the Regional Board cannot prescribe the method by
21 which Petitioner is to provide replacement water to Huhtamaki. Therefore,
22 Petitioner should be allowed to rely on any volume of water produced by OU-3 as
23 constituting all or part of a backup water supply for Huhtamaki. The failure to
24 include water from OU-3 as a valid backup water supply constitutes an abuse of
25 discretion and is contrary to law.

26 **VIII. STATEMENT OF TRANSMISSION OF PETITION TO REGIONAL BOARD.**

27 A copy of this Petition is being concurrently transmitted to the Executive Officer of the
28 Central Valley Regional Water Quality Control Board as of the date of filing of this document.

1 The Memorandum of Points and Authorities will be submitted 10 working days after Petitioner
2 receives a copy of the transcript of a public hearing regarding the CAO. Via letter dated
3 August 30, 2006 and again on September 26, 2006,¹⁰ Petitioner formally requested in writing that
4 the Regional Board hold a public hearing to discuss the provisions that the Regional Board to
5 include in the Order. The Regional Board denied Petitioner's request for a public hearing when it
6 issued the Order on September 8, 2006 without allowing for public comment and participation at
7 a public hearing prior to issuance of the Order.

8 **IX. STATEMENT REGARDING WHETHER THE SUBSTANTIVE ISSUES OR**
9 **OBJECTIONS CONTAINED HEREIN WERE RAISED BEFORE THE**
10 **REGIONAL BOARD.**

11 AmeriPride was not given the opportunity to have a public hearing on the draft Order.
12 Therefore, changes were made and provisions were added to the Order without notice prior to,
13 and opportunity for comment by, the public. Thus, it is likely that not all of the substantive issues
14 contained herein were raised before the Regional Board, due to the lack of a public hearing,
15 and/or the lack of opportunity for the public and Petitioner to provide comments on the changes
16 and additional information contained in the Order.

17 Although Petitioner engaged in various meetings and written correspondence regarding
18 the Order with the Regional Board, the Regional Board never circulated a draft Order for public
19 comment and hearing prior to the issuance of the Order on September 8, 2006; the draft Order
20 was only circulated to Petitioner, Huhtamaki, and those parties listed on the Regional Board's
21 interested parties list for the AmeriPride site. As noted on the transmittal letter for the Order, via
22 letter dated August 30, 2006, Petitioner requested a hearing before the Regional Board regarding
23 issuance of the Order. Petitioner again requested a hearing before the Regional Board via letter
24 dated September 26, 2006. The Regional Board, however, issued the Order without allowing
25 Petitioner a public hearing, as was timely requested by Petitioner. To date, the Regional Board

26 ¹⁰ In the September 8, 2006 transmission of the Order, the cover letter from the Regional Board
27 noted that "AmeriPride may request that the Regional Board consider whether to ratify this Order
28 at a future Regional Board meeting." Via letter dated October 5, 2006, the Regional Board
granted Petitioner's numerous requests for a hearing on the Order and placed the Order on the
meeting agenda for the Regional Board meeting currently scheduled for December 7-8, 2006.

1 has not provided the public with any opportunity to provide comments on the new language
2 contained in the final version of the Order. Instead, the Regional Board noted in the Order
3 transmittal letter that Petitioner "may request that the Regional Board consider whether to ratify
4 this Order at a future Regional Board meeting." Petitioner did its best to convey its position on
5 the issues and objections contained herein in both writing and orally before Regional Board staff
6 during various meetings, yet was unable to raise such issues and objections in a formal hearing
7 before the Regional Board, as repeatedly requested. Via letter dated October 5, 2006, the
8 Regional Board granted Petitioner's numerous requests for a hearing on the Order and placed the
9 Order on the meeting agenda for the Regional Board meeting currently scheduled for December
10 7-8, 2006, three months after the effective date of the Order.

11 **X. INTERESTED PARTIES.**

12 The attached Order (Appendix A) contains a list of the names and addresses of interested
13 parties.

14
15 DATED: October 10, 2006.

16 Stoel Rives LLP

17
18 By: 

19 *for* CHRISTOPHER A. KEELE
20 Attorneys for Petitioner
21 AMERIPRIDE SERVICES INC.
22
23
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25
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27
28

**APPENDIX A
TO PETITION FOR REVIEW**



Linda S. Adams
Secretary for
Environmental
Protection

California Regional Water Quality Control Board Central Valley Region

Robert Schneider, Chair

Sacramento Main Office
11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114
Phone (916) 464-3291 • FAX (916) 464-4645
<http://www.waterboards.ca.gov/centralvalley>



Arnold
Schwarzenegger
Governor

8 September 2006

CERTIFIED MAIL
7006 0100 0000 5887 1333

Ms. Rojean Rada
AmeriPride Services, Inc.
10801 Wayzata Blvd.
Minnetonka, MN 55305

**TRANSMITTAL OF CLEANUP AND ABATEMENT ORDER NO. R5-2006-0530,
AMERIPRIDE SERVICES, INC., AND VALLEY INDUSTRIAL SERVICES, INC.,
7620 WILBUR WAY, SACRAMENTO, SACRAMENTO COUNTY**

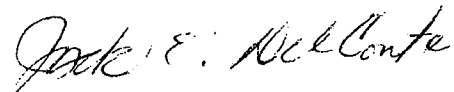
Enclosed is Cleanup and Abatement Order No. R5-2006-0530 (Order) issued to AmeriPride Services, Inc., and Valley Industrial Services, Inc., (AmeriPride) for cleanup of pollution at the 7620 Wilbur Way site in Sacramento. This Order replaces and supercedes Cleanup and Abatement Order No. R5-2003-0059.

Discharges of waste from the AmeriPride site polluted groundwater used as a source for production water by Huhtamaki Americas (Huhtamaki) at 8450 Gerber Road, Sacramento. This Order directs AmeriPride to provide to Huhtamaki, by **1 April 2007**, permanent replacement water of comparable quality and quantity to what the Chinnet #1 and Chinnet #2 wells were capable of producing before being impacted by volatile organic compounds, and, by **15 September 2006**, to begin paying Huhtamaki its costs of continued use of its interim supply.

AmeriPride and other interested persons received a draft copy of the Order and were provided an opportunity to submit written comments by 11 August 2006. Comments were received from AmeriPride and from Huhtamaki and discussed in a meeting with both parties on 15 August 2006. In a 30 August 2006 letter, AmeriPride requested a hearing before the Central Valley Regional Water Quality Control Board (Regional Board) regarding issuance of this Order. It is critical that this Order be issued now to assure that remediation and water supply issues are addressed in a timely manner. AmeriPride may request that the Regional Board consider whether to ratify this Order at a future Regional Board meeting. Regardless of such a request for consideration, the Order is in effect as of the date of the signature. For any person aggrieved by this Order, including AmeriPride, to preserve its rights under the Water Code, the State Water Resources Control Board must receive a petition for review of this

Order within 30 days of the date of this Order. The procedures for filing petitions are found at Title 23 California Code of Regulations Sections 2050 et seq.

If you have any questions, please call Susan Timm at (916) 464-4657.



JACK E. DELCONTE
Assistant Executive Officer

cc: Ms. Frances McChesney, OCC, State Water Resources Control Board, Sacramento
Mr. Ken Pogue, Attorney Generals Office, Sacramento
Mr. Carl Lischeske, Department of Health Services, DW Field Operations Branch, Sacramento
Ms. Jim Carlisle, Office of Environmental Health Hazard Assessment, Sacramento
Mr. Mark Loutzenhiser, Sacramento Metropolitan Air Quality Management District, Sacramento
Mr. Barry Marcus, Environmental Management Department, Sacramento County, Sacramento
Mr. Glen Del Sarto, Sacramento Regional County Sanitation District, Sacramento
Mr. Joseph Peter, AmeriPride Services Inc., Minnetonka, MN
Mr. Lee Smith, Stoel Rives, LLP, Sacramento
Mr. Christopher Keele, Stoel Rives, San Francisco
Mr. Stephen Darmody, Shook, Hardy & Bacon, Miami, Florida
Mr. L. John Nelson, Shook, Hardy & Bacon, Kansas City, MO
Ms. Rochelle Stringer, Huhtamaki Americas, DeSoto, Kansas
Mr. Craig Komulainen, Huhtamaki Americas, Sacramento
Mr. John Poulos, Pillsbury Winthrop, LLP, Sacramento
Mr. Phillip R. Scaletta, Ice Miller, Indianapolis, Indiana
Mr. Mike Thomas, Downey, Brand, Seymour & Rohwer, LLP, Sacramento
Mr. Mark D. Anstoetter, Shook, Hardy & Bacon, Kansas City, Missouri
Mr. Mitch Dion, California American Water Company, Sacramento
Mr. David Cooke, Allen, Matkins, Leck, Gamble & Mallory, San Francisco
Mr. Jeff Thuma, Delta Environmental Consultants, Inc., St. Paul, Minnesota
Mr. Christopher Alger, Iris Environmental, Oakland
Mr. Stephen Carlton, GeoTrans, Inc., Rancho Cordova
Mr. Andy Gremos, Keramida Environmental, Inc., Indianapolis, Indiana
Mr. Dave Brown, Zimmer Custom Made Packaging, Sacramento
Mr. Joseph Turner, Brown and Caldwell, Sacramento
Mr. Joe Niland, Montgomery Watson Harza, Sacramento
Ms. Dee Lewis, Sacramento
Mr. Michael Fernandez, TOSC, Corvallis, Oregon
Ms. Jane Williams, Rosamond

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER NO. R5-2006-0530
FOR
AMERIPRIDE SERVICES, INC., AND
VALLEY INDUSTRIAL SERVICES, INC.
7620 WILBUR WAY, SACRAMENTO
SACRAMENTO COUNTY

This Order is issued to AmeriPride Services, Inc. (AmeriPride) and Valley Industrial Services, Inc., (hereafter collectively referred to as Discharger) based on California Water Code Division 7, in particular provisions of California Water Code Section 13304, which authorizes the Central Valley Regional Water Quality Control Board (hereafter Regional Water Board) to issue a Cleanup and Abatement Order, and California Water Code Section 13267, which authorizes the Regional Water Board to require submittal of technical and monitoring reports.

The Regional Water Board finds, with respect to the Discharger's acts or failure to act, the following:

BACKGROUND

1. AmeriPride owns and operates an industrial laundry under the name AmeriPride Uniform Services on its property at 7620 Wilbur Way (hereafter referred to as the site) in Sacramento, Sacramento County. The site encompasses approximately 4.6 acres, as shown on Attachment 1, which is made part of this Order. Also shown on Attachment 1 are the locations of monitoring wells and water supply wells affected or potentially affected by the tetrachloroethylene (PCE) groundwater plume, which emanates from the site.
2. Valley Industrial Laundry constructed the original industrial laundry facility at the site in the mid-1960s. The original facility was approximately 16,000 square feet in size. Valley Industrial Laundry performed laundry-cleaning services including dry cleaning and water washing. In 1972, Valley Industrial Laundry transferred all of its assets to Valley Industrial Services, Inc., a newly created, wholly owned subsidiary of Valley Industrial Laundry. Petrolane, Inc., a California corporation, then purchased the stock of Valley Industrial Services, Inc. in exchange for Petrolane stock. As a result of this 1972 transaction, Valley Industrial Services, Inc. became a wholly owned subsidiary of Petrolane, Inc.
3. In 1980, the facility building was expanded to approximately double its size.
4. In 1983, Petrolane sold all California laundry facilities, including the site, to Mission Industries. Because of anti-trust concerns raised by the federal government, Mission Industries sold the site to Welch's Overall Cleaning Company, Inc. (Welch's)

within days of acquiring the site.

5. Welch's operated the facility until 31 December 1998 when Welch's was merged into AmeriPride, its parent company. Welch's and AmeriPride expanded the facility, adding a total of approximately 21,000 square feet in 1990 and 2000.
6. Although Valley Industrial Laundry and/or Valley Industrial Laundry, Inc., and Valley Industrial Services, Inc. may have dissolved, during their existence they had insurance policies that, if located, may provide coverage related to this Order. As former owners of the site and operators of the laundry facility, these entities caused or permitted waste to be discharged to waters of the state where it has created and threatens to create a condition of pollution or nuisance.
7. The dry-cleaning solvent, PCE, reportedly was used at the site from the early 1960s to 1982.
8. AmeriPride is in litigation with other parties to determine, as between the parties to the litigation, responsibility to pay for cleanup.
9. According to State Water Resources Control Board (State Board) precedent and pursuant to California Water Code Section 13304, AmeriPride, as the current owner of the site, is a responsible party.
10. In 1997, during remodeling work, AmeriPride detected volatile organic compounds (VOCs), including PCE and trichloroethylene (TCE), in near-surface soil beneath the site at concentrations up to 7,800 micrograms per kilogram ($\mu\text{g}/\text{kg}$) and 69 $\mu\text{g}/\text{kg}$, respectively. AmeriPride conducted additional soil investigations including passive soil gas sampling, Geoprobe[®] soil boring sampling, and soil vapor extraction (SVE) pilot tests to determine the extent of the PCE in soil gas and possible soil cleanup alternatives. SVE wells were installed prior to expansion of the building and have since been connected to an SVE remediation system. The SVE system has been operating intermittently since 14 August 2003.
11. AmeriPride conducted a series of groundwater investigations to determine the lateral and vertical extent of PCE, and its degradation products, TCE and cis-1,2 dichloroethylene (cis-1,2 DCE) pollution. The groundwater PCE plume extends approximately 2,000 feet laterally in the downgradient direction (to the east) and to depths in excess of 200 feet below ground surface (bgs). The maximum PCE, TCE and cis-1,2 DCE concentrations detected in groundwater during October 2002 were 11,000 microgram per liter ($\mu\text{g}/\text{L}$) PCE in monitoring well MW-1, 220 $\mu\text{g}/\text{L}$ TCE in monitoring wells MW-1 and MW-20, and 750 $\mu\text{g}/\text{L}$ cis-1,2 DCE in monitoring well MW-20.
12. Unsaturated soils beneath the site consist of laterally and vertically variable silts, clays and silty sands underlain by a relatively continuous layer of sand and gravel

with cobbles up to 30 feet thick. Groundwater is first encountered immediately below the sand/gravel/cobble layer at a depth of approximately 75 feet bgs. Saturated sediments consist of inter-bedded fine- and course-grained materials to depths of greater than 600 feet bgs. Groundwater flow at all of the depths monitored for plume definition is generally to the east/northeast; however, groundwater flow directions are influenced by pumping wells screened in various zones within the aquifer system.

13. Several municipal and domestic supply wells are located within the vicinity of the site, as shown on Attachment 1. In August 2001, PCE was detected in groundwater at a concentration of 78 µg/L in the California-American Water Company (Cal-Am) Wilbur #1 municipal supply well, which was on the northeast boundary of the site. During peak summer demand in 2001, the Wilbur #1 well was pumped at 900 gallons per minute. The Wilbur #1 well was screened below 426 feet bgs. The PCE detection was confirmed in November 2001 and the Wilbur #1 well was taken off line on 15 November 2001. On 21 January 2003, the California Department of Health Services (DHS) advised Regional Water Board staff that, in accordance with DHS Policy Memo 97-005, wellhead treatment would not be allowed on the Wilbur #1 well until full compliance with the policy can be demonstrated. Cal-Am discontinued use of the Wilbur #2 well, located approximately 500 feet south of the site, on 16 December 2001, due to the proximity to the PCE plume, even though PCE has not been detected in the Wilbur #2 well using a detection limit of 0.5 µg/L.
14. Huhtamaki Americas (Huhtamaki) operates a paper plate manufacturing facility at 8450 Gerber Road, approximately 1800 feet east of the AmeriPride site. The Huhtamaki facility used groundwater in its manufacturing process and for drinking water at the facility. The groundwater was supplied by Huhtamaki's on-site water supply wells, the Chinnet #1 and Chinnet #2 wells, until these wells were polluted by the PCE plume emanating from the AmeriPride property. Huhtamaki provided data on water usage at its facility over the period of time from 1991 until mid-August 2006. This data showed a maximum use of 1,623 gpm on 18 May 1994 and of 1,562 gpm on 5 July 1994, when the supply wells were providing all process and drinking water. The water well drillers report dated 8 July 1963 shows that during a pumping test on the Chinnet #1 well, the well produced 2,057 gpm. Although no pumping test was conducted on the Chinnet #2 well, the wells have similar construction and screened intervals and were drilled within days of each other; therefore, both wells should have similar production capabilities. Huhtamaki requested a replacement water supply of 1,500 gpm per well.
15. In August 2001, PCE was detected at a concentration of 0.60 µg/L in the Chinnet #1 well. At that time Huhtamaki changed its water system so that drinking water in the plant was supplied by a municipal source and the well water was used only as process water. The concentration of PCE in this well has continually increased since PCE was first detected. The most recent water quality data available to the Regional Water Board for the Chinnet #1 well showed a detection of 2.9 µg/L PCE on

15 October 2002.

16. Sacramento County Environmental Management Department (County) was the lead regulatory agency until February 2002, when the County referred the site oversight to the Regional Water Board.
17. In April 2002, PCE was detected in the Chinnet # 2 well at 14 µg/L. This well was historically used as a backup water supply and a source of fire protection water for the Huhtamaki facility.
18. AmeriPride submitted the *Draft Remedial Investigation/Feasibility Study (RI/FS)*, dated 31 May 2002, that included remedial alternatives for source area soil and groundwater polluted with PCE. On 31 July 2002, Regional Water Board staff sent AmeriPride comments on the draft RI/FS which, in part, requested that AmeriPride submit: (1) by 30 August 2002 a work plan to implement the proposed alternatives for soil (soil vapor extraction) and groundwater (extraction and treatment) remediation in the source area, and (2) by January 2003 a site-wide RI/FS for cleanup of the entire groundwater plume to background levels.
19. On 28 August 2002, AmeriPride agreed to undertake the actions as described in Finding 18.
20. On 30 August 2002, Huhtamaki informed Regional Water Board staff that, due to the PCE levels in the Chinnet wells, it would have to discontinue use of these wells.
21. In a 19 December 2002 letter, Regional Water Board staff concurred with AmeriPride that site cleanup would be broken into separate operable units (OUs) for cleanup of soil and groundwater. In subsequent documents, AmeriPride refers to the contaminated soil in the source area as OU1, the groundwater polluted with PCE at concentrations greater than 1,000 µg/L as OU2, and the remainder of the PCE plume as OU3.
22. On 14 January 2003, Regional Water Board staff agreed that due to the time necessary to properly design a treatment system for the SVE remedy, AmeriPride would not be able to complete and submit the site-wide groundwater RI/FS in January 2003. A new date was not proposed at that time.
23. On 25 April 2003, the Regional Water Board adopted Resolution No. R5-2003-0058 approving the *Remedial Action Work Plan* for OU1 and adopted *Cleanup and Abatement Order No. R5-2003-0059*. The Cleanup and Abatement Order required the comprehensive site-wide groundwater RI/FS be submitted on 20 June 2003.
24. On 27 May 2003, AmeriPride filed a petition with the State Board requesting reconsideration and a stay of *Cleanup and Abatement Order No. R5-2003-0059*.

25. On 20 June 2003, AmeriPride submitted an RI/FS to Regional Water Board staff proposing groundwater extraction, treatment and discharge to cleanup groundwater in the source area (OU2) and groundwater extraction with wellhead treatment from the Chinnet #1 production well to cleanup the remainder of the plume (OU3).
26. On 8 July 2003, the State Board dismissed the request for a stay of Cleanup and Abatement Order No. R5-2003-0059.
27. On 14 August 2003, in compliance with *Cleanup and Abatement Order No. R5-2003-0059*, AmeriPride began soil remediation with soil vapor extraction in OU1.
28. On 12 September 2003, Regional Water Board staff concurred with the portion of the 20 June 2003 RI/FS in which AmeriPride proposed to remediate OU2. Regional Water Board staff requested that AmeriPride submit a revised RI/FS with an alternative for cleanup of OU3 without the use of the Chinnet #1 well as an extraction well. In this letter, Regional Water Board staff requested that AmeriPride submit, by 9 October 2003, a remedial action work plan for OU2 and a schedule to complete the tasks necessary to prepare a revised RI/FS for cleaning up OU3.
29. On 2 October 2003, the Regional Water Board issued Monitoring and Reporting Program R5-2003-0820 to require sampling and analyses of groundwater to delineate pollutant plumes and determine if remediation efforts are effective.
30. In its 8 October 2003 letter, AmeriPride proposed submitting a revised RI/FS for OU3 on 7 June 2004. AmeriPride requested that when reviewing the revised RI/FS, Regional Water Board staff reconsider the use of the Chinnet #1 to cleanup the distal portion of the plume and as replacement water for Huhtamaki.
31. On 3 March 2004, the State Board dismissed AmeriPride's Petition for Reconsideration of *Cleanup and Abatement Order No. R5-2003-0059*.
32. On 2 April 2004, AmeriPride filed a petition for writ of mandate with the Sacramento County Superior Court of the State of California to stay any further implementation of *Cleanup and Abatement Order No. R5-2003-0059* and to "overturn the CAO, in particular the requirements for alternate water supplies to be provided for the Cal-Am/Wilbur wells and the Huhtamaki/Chinnet wells, and that AmeriPride be relieved of the requirement of investigating the source of well contamination in Wilbur 1."
33. On 15 October 2004, AmeriPride submitted the *Remedial Investigation/Feasibility Study Report: Downgradient Ground Water*, which recommended cleanup of OU3 using the Chinnet #1 well as an extraction well, treating the extracted groundwater with activated granulated carbon and providing the treated water to the Huhtamaki facility as replacement water supply.

34. On 18 March 2005, Regional Water Board staff commented on the 15 October 2004 RI/FS and included reasons why the use of the Chinnet #1 well was unacceptable. Regional Water Board staff again requested that AmeriPride submit a revised RI/FS that proposed alternatives for cleanup of OU3 without the use of the Chinnet #1 well.
35. On 15 April 2005, AmeriPride submitted a letter response to Regional Water Board staff's letter dated 18 March 2005 refuting staff conclusions that use of the Chinnet #1 as an extraction well to cleanup the VOC plume was unacceptable. AmeriPride agreed, however, to revise the RI/FS and submit the revised document on 18 September 2005.
36. In a 12 August 2005 letter, Regional Water Board staff restated that use of the Chinnet #1 as an extraction well would not be an effective or an acceptable means of cleaning up the polluted groundwater. Extraction from the Chinnet #1 would draw clean water into the extraction well from deeper, unpolluted water-bearing zones and would require that highly polluted groundwater be drawn laterally into less polluted and possibly unpolluted zones. Since the first intake screen in the Chinnet #1 well is at 168 feet bgs and the zones of highest pollution are approximately between 85 feet bgs and 110 feet bgs, extraction from this well would require that the polluted groundwater be pulled across several low permeability layers. The low permeability layers would retard the downward movement of the groundwater and adsorb PCE to the clay sediments. In the 12 August letter, Regional Water Board staff also stated, "AmeriPride is scheduled to start up its source area groundwater remediation system no later than November 2005. The hydrogeologic information gained by the vertical investigation boring in the distal portion of the plume and during the first few months of extraction in the source area should be used to re-calibrate the groundwater model and assist in determining optimal placement of the extractions wells for the downgradient groundwater cleanup, extraction well screen depths and the appropriate pumping rate to capture the entire VOC plume." Regional Water Board staff requested that, by 2 January 2006, AmeriPride submit a revised RI/FS for OU3 using the additional hydrogeologic information from the distal boring and the source area extraction to recalibrate the groundwater model.
37. On 2 November 2005, in a mediation meeting between Regional Water Board staff and AmeriPride, the two parties agreed to revise *Cleanup and Abatement Order No. R5-2003-0059*. Revised Cleanup and Abatement Order No. R5-2005-0721 (revised Order) was issued on 21 December 2005, which included those items agreed upon between the two parties and other provisions necessary to cleanup and abate the effects of pollution caused by activities conducted at the site.
38. As part of the 2 November mediation agreement AmeriPride agreed, without admitting liability, that AmeriPride will comply with a revised Order incorporating the following requirements and dates:

- To cleanup and capture the entire PCE plume within a reasonable amount of time consistent with State Board Resolution 92-49.
- Not to petition the State Board challenging the revised Order and not to challenge the revised Order in court.
- To dismiss the petition for writ of mandate filed in the Superior Court of California by AmeriPride, *AmeriPride Services, Inc. v. Central Valley Regional Water Quality Control Board*, Sacramento County Superior Court Case No. 04CS00426.
- By 15 December 2005, provide Regional Water Board staff with a technical report outlining how it will provide replacement water for Huhtamaki. This report will include an analysis of all aspects of the replacement water process, including, but not limited to, location, permitting, storage, conveyance, volume, quality, and scheduling. AmeriPride will implement the schedule in the approved technical report for replacement water. The schedule will become part of the revised Order.
- By 15 January 2006, submit to the Regional Water Board a final RI/FS for cleanup of the PCE plume. The RI/FS will include a refined site model for an extraction and treatment scenario to capture and cleanup of the entire PCE plume to the non-detect contour incorporating all available pumping data (including December 2005 data).
- By 15 February 2006, provide the Regional Water Board with a final detailed technical report for providing replacement water to Huhtamaki responsive to Regional Water Board comments.
- By 15 June 2006, properly abandon the Chinet #1 and Chinet #2 wells and provide proof that the wells have been properly abandoned. Prior to abandonment, video logs of the two wells must be completed and submitted to Regional Water Board staff.
- By 15 September 2006, provide in kind replacement water to Huhtamaki. In kind replacement water will be "uninterrupted replacement water service" consistent with California Water Code Requirements.
- By 1 January 2007, complete installation of a groundwater extraction system to capture and cleanup the toe of the plume to non-detect VOC levels. The system shall include a monitoring well network to confirm capture and cleanup to these levels.

39. After mediation on 2 November 2005, without admitting liability, AmeriPride filed on November 3, 2005, a request with the Sacramento County Superior Court to dismiss its petition for writ of mandate challenging Cleanup and Abatement Order No. R5-2003-0059.
40. Wilbur Well #1 was video logged on 26 September 2005 and was abandoned on 5 December 2005.
41. On 15 December 2005, AmeriPride submitted a draft Water Supply Well Replacement Work Plan to provide permanent water replacement for Huhtamaki. Regional Water Board staff commented on the draft Work Plan and, on 15 February 2006, AmeriPride submitted a draft final Water Supply Replacement Work Plan.
42. In December 2005, AmeriPride began groundwater remediation in OU2 using extraction and treatment technology.
43. On 15 January 2005, AmeriPride submitted a revised draft RI/FS for cleanup of OU3. Regional Water Board staff submitted a comment letter that AmeriPride, by 28 April 2006, submit an addendum to the RI/FS or resubmit the draft final RI/FS which fully addresses all the Regional Water Board comments including; (1) a conceptual design to address cleanup of the entire VOC plume, (2) a proposal to provide full capture and treatment of the toe of the plume, (3) an updated groundwater model run for various agreed upon scenarios using hydrogeologic information from the source area remediation system and (4) a proposal to delineate the entire VOC plume to the 0.5 µg/L contour.
44. Tasks required in Cleanup and Abatement Order No. R5-2003-0059 which have not been accomplished as of the date of this Order are as follows:
- To provide an adequate work plan for interim and permanent replacement water for the Huhtamaki facility.
 - To provide a plan to determine how PCE entered the Chinnet #1 well.
 - To determine if the Wilbur #2 presents a conduit for downward migration of polluted groundwater.
 - To submit an acceptable comprehensive Remedial Investigation/Feasibility Study for cleanup of the remainder of the plume (OU3), Cleanup of OU3 is being done in phases. The RI/FS for phase 1 has been approved. An RI/FS for phase 2 of OU3 remediation has not been submitted.
45. On 19 January 2006, Huhtamaki filed a petition with the State Board challenging Cleanup and Abatement Order No. R5-2005-0721 and the State Board found that due to the provisions in the Order, Cleanup and Abatement Order No. R5-2005-0721

is not in effect. Because there was a paragraph stating that Cleanup and Abatement Order No. R5-2003-0059 would be rescinded if no petitions were received, Cleanup and Abatement Order No. R5-2003-0059 continues in effect.

46. AmeriPride submitted a 19 May 2006 RI/FS that incorporates comments from the Regional Water Board on the 19 January 2006 draft RI/FS for OU3. Regional Water Board staff advised AmeriPride that implementation of OU3 remediation may be performed in phases. Phase 1 is containment and cleanup of the toe of the plume to the 0.5 µg/L VOC contour. Phase 2 is cleanup of the entire VOC plume.

47. On 28 June 2004, Regional Water Board staff sent a new revised draft Order to Huhtamaki and AmeriPride for comment. This draft Order would require the Discharger to supply "in kind permanent replacement water" to Huhtamaki.

On 15 August 2006 Regional Water Board staff, Huhtamaki and AmeriPride met to discuss Water Supply Replacement. At the meeting AmeriPride requested a definition of "in-kind replacement". Regional Water Board staff agreed to send a letter to Huhtamaki and AmeriPride describing the Regional Water Board's intent with respect to the quantity and quality of replacement water supply.

Also at the 15 August 2006 meeting, AmeriPride and Huhtamaki agreed to mediate a settlement agreement regarding adequate water supply replacement. This Order requires the mediation to reach agreement as to quality and quantity, responsibility for risk, and the method of replacement by 15 October 2006. If, by 15 October 2006, the mediation is unsuccessful, AmeriPride must comply with the requirements for water replacement in this Order.

48. This Order is intended to replace and supercede Cleanup and Abatement Order No. R5-2003-0059

49. Permanent replacement supply for Wilbur #1 and Wilbur #2 has been resolved in a Settlement Agreement between Cal-Am, AmeriPride Services, Inc., and Petrolane, Incorporated. The Settlement Agreement required AmeriPride to pay \$2,000,000.00 to Cal-Am and that "Within ten business days of receipt of the Settlement Payment, Cal-Am shall represent by letter to the [Water] Board that, insofar as Cal-Am is concerned, AmeriPride has satisfied the requirements of the CAO [Cleanup and Abatement Order No. R5-2003-0059] that AmeriPride and Valley Industrial Services, Inc. provide in-kind replacement of water supplies lost from the Wilbur Way Wells [Wilbur #1 and Wilbur #2 water supply wells]." This letter from Cal Am was received on 21 September 2005.

50. Huhtamaki is utilizing water purchased from the Cal-Am as an interim water supply. Huhtamaki has filed a lawsuit against AmeriPride to recover damages due to the loss of the use of Chinnet #1 and Chinnet #2 wells.

51. This Order requires AmeriPride, by 15 September 2006, to monetarily compensate Huhtamaki for the actual cost to purchase replacement water until the permanent water supply required by this Order is operational and, by 1 April 2007, to complete the work to provide permanent uninterrupted replacement water to Huhtamaki.

AUTHORITY – LEGAL REQUIREMENTS

52. Section 13304(a) of the California Water Code provides that:

Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts. A cleanup and abatement order issued by the state board or a regional board may require the provision of, or payment for, uninterrupted replacement water service, which may include wellhead treatment, to each affected public water supplier or private well owner. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

53. Section 13304(f) of the California Water Code provides that:

Replacement water provided pursuant to subdivision (a) shall meet all applicable federal, state, and local drinking water standards, and shall have comparable quality to that pumped by the public water system or private well owner prior to the discharge of waste.

54. Section 13267(b)(1) of the California Water Code provides that:

In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to

discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

55. Section 13304(c)(1) of the California Water Code provides in pertinent part that:

[T]he person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of the waste within the meaning of subdivision (a), are liable to that government agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial action....

56. The State Board has adopted Resolution No. 92-49, the *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under California Water Code Section 13304*. This Policy sets forth the policies and procedures to be used during an investigation or cleanup of waste and requires that cleanup levels be consistent with State Board Resolution 68-16, *Statement of Policy with Respect to Maintaining High Quality of Waters in California* (the antidegradation policy). Resolution 92-49 and the *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, 4th Edition* (hereafter Basin Plan) establish the cleanup levels to be achieved. Resolution 92-49 requires the waste to be cleaned up to background, or if that is not reasonable, to an alternative level that is the most stringent level that is economically and technologically feasible in accordance with Title 23 California Code of Regulations Section 2550.4. Any cleanup level alternative to background must (1) be consistent with the maximum benefit to the people of the state; (2) not unreasonably affect present and anticipated beneficial use of such water; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Board.

57. Chapter IV of the Basin Plan contains the *Policy for Investigation and Cleanup of Contaminated Sites*, which describes the Regional Water Board's strategy for managing contaminated sites. This Policy is based on California Water Code Sections 13000 and 13304, the Title 23 California Code of Regulations (CCR), Division 3, Chapter 15 and Title 27 CCR, Division 2, subdivision 1 regulations, and State Board Resolutions Nos. 68-16 and 92-49. The Policy includes site investigation, source removal or containment, information required to be submitted for consideration in establishing cleanup levels, and the bases for establishment of

soil and groundwater cleanup levels.

58. The State Board adopted the Water Quality Enforcement Policy, which states in part:

At a minimum cleanup levels must be sufficiently stringent to fully support beneficial uses, unless the RWQCB allows a containment zone. In the interim, and if restoration of background water quality cannot be achieved, the CAO should require the discharger(s) to abate the effects of the discharge. Abatement activities may include the provision of alternate water supplies. (Enforcement Policy, p. 19.)

59. The Regional Water Board's Basin Plan designates beneficial uses of the waters of the State, establishes water quality objectives (WQOs) to protect these uses, and establishes implementation policies to implement WQOs. The beneficial uses of the groundwater beneath the site are domestic, municipal, industrial, and agricultural supply

60. The wastes detected at the site are solvents used in the dry cleaning process and breakdown products that are not naturally occurring, and some are known human carcinogens. Pollution of groundwater with PCE, TCE and cis-1,2 DCE impairs the beneficial uses of the groundwater.

WQOs listed in the Basin Plan include numeric WQOs, e.g., state drinking water maximum contaminant levels (MCL) that are incorporated by reference, and narrative WQOs, including the narrative toxicity objective and the narrative tastes and odors objective for surface and groundwater. The numeric limits for the constituents of concern listed in the following table implement the Basin Plan WQOs.

Constituent	Limits	WQO	Reference
PCE	0.06 µg/L ¹	Narrative Toxicity	California Public Health Goal in Drinking Water – Office of Environmental Health Hazard Assessment
TCE	0.8 µg/L	Narrative Toxicity	California Public Health Goal in Drinking Water – Office of Environmental Health Hazard Assessment.
cis-1,2 DCE	6 µg/L	California Primary Maximum Contaminant Level	CCR Title 22, Section 64444 California Department of Health Services

¹µg/L--Micrograms per liter

61. The constituents listed in Finding 59 are wastes, as defined in the California Water Code, Section 13050. The groundwater exceeds the WQOs for the constituents

listed in Finding 11. The exceeding of applicable WQOs in the Basin Plan constitutes pollution as defined in California Water Code Section 13050(l)(1). The Basin Plan requires that the Orders protect all beneficial uses and that the appropriate water quality objective is the objective to protect the most sensitive beneficial use. The most sensitive beneficial use with respect to the constituents at this site is the industrial use, which requires water that does not contain constituents of concern at a detectable level and is of high quality to be usable in this food related industrial process according to the information provided by the industrial user.

DISCHARGER LIABILITY

62. As described in Findings 11, 58, 59 and 60, the Discharger is subject to an order pursuant to California Water Code Section 13304 because the Discharger has caused or permitted waste to be discharge or deposited where it has discharged to waters of the state and has created, and continues to threaten to create, a condition of pollution or nuisance. The condition of pollution is a priority violation and issuance or adoption of a cleanup and abatement order pursuant to California Water Code Section 13304 is appropriate and consistent with policies of the Regional Water Board. The Discharger purchased the site in 1983 and knew, or should have known, at that time that PCE had been used in large quantities by its predecessor at the site, a large commercial laundry/dry cleaning operation. The Discharger owns the property, has knowledge of the contamination and the ability to control the VOC plume. In addition, AmeriPride discharged PCE in its wastewater, whether or not it used PCE in its operations.
63. This Order requires investigation and cleanup of the site in compliance with the California Water Code, applicable portions of the Basin Plan, Resolution 92-49, and other applicable plans, policies, and regulations. As described in Finding 52, the discharger is subject to an order pursuant to California Water Code Section 13267 to submit technical reports because existing data and information about the site indicate that waste has been discharged, is discharging, or is suspected of discharging, at the property, which is or was owned and/or operated by the Discharger named in the Order. The technical reports required by this Order are necessary to assure compliance with Section 13304 of the California Water Code, including to adequately investigate and cleanup the site to protect the beneficial uses of waters of the state, to protect against nuisance, and to protect human health and the environment.
64. If the Discharger fails to comply with this Order, the Executive Officer may request the Attorney General to petition the superior court for the issuance of an injunction.
65. If the Discharger violates this Order, the Discharger may be liable civilly in a monetary amount provided by the California Water Code.

66. If a court makes a final determination that any entity not named as a "Discharger" in this Order is the agent or alter ego of a Discharger, or is otherwise liable for the acts or omissions of a Discharger that caused or permitted the discharges of waste that are the subject of this Order, the Executive Officer will consider revising this Order to name that entity as a "Discharger."
67. The issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.), pursuant to Title 14, California Code of Regulations (CCR), Section 15321(a)(2). The implementation of the Order is also an action to assure the restoration of the environment and is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000, et seq.) in accordance with Title 14, CCR, Sections 15308 and 15330.
68. Any person affected by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with Title 23, CCR, Sections 2050-2068. The State Water Board must receive the petition within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request and are available at www.swrcb.ca.gov.

REQUIRED ACTIONS

IT IS HEREBY ORDERED that, pursuant to Section 13300, Section 13304 and Section 13267 of the California Water Code, AmeriPride Services, Inc. and Valley Industrial Services, Inc. (collectively, "Discharger") shall:

1. Investigate, clean up the waste, and abate the effects of the discharges of waste, forthwith, at 7620 Wilbur Way, Sacramento, in conformance with the State Board's Resolution No. 92-49 *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304* and with the Regional Water Board's *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins* (in particular the Policies and Plans listed within the Control Action Considerations portion of Chapter IV). "Forthwith" means as soon as is reasonably possible. Compliance with this requirement shall include, but not be limited to, completing the tasks listed below and shall include those actions necessary to investigate, clean up and abate the effects of discharges of waste that have emanated from 7620 Wilbur Way beyond the property boundaries. This Order is replacing and superceding Cleanup and Abatement Order No. R5-2003-0059.

Water Supply Replacement

2. Ameripride shall, beginning **15 September 2006**, monetarily compensate Huhtamaki for the actual cost to purchase replacement water until the permanent replacement water supply required by this Order is operational.

3. If, by **15 October 2006**, Huhtamaki and AmeriPride have reached an agreement on quality and quantity of the water replacement and the method of replacement, the implementation of that agreement will constitute compliance with Paragraphs 2 through 7 of this Order.
4. Ameripride shall, by **15 November 2006**, complete the installation of the pilot boring as proposed in the schedule contained in the 21 June 2006 Addendum to the Proposed Final Huhtamaki Water Supply Well Replacement Work Plan.
5. Ameripride shall, by **1 April 2007**, complete the work to provide permanent and uninterrupted replacement water to Huhtamaki in accordance with a Regional Water Board approved Water Replacement Plan and consistent with Water Code requirements. AmeriPride shall install two wells which supply replacement water of comparable quality and quantity to that provided by the Chinnet #1 and Chinnet #2 wells, or another alternative replacement system, including a back up supply or monetary compensation for a replacement system. Each replacement well shall be capable of supplying 1,500 gallons per minute.
6. If any proposed long-term action requires Department of Health Services or County of Sacramento approval prior to implementation, the Work Plan shall demonstrate that the action will comply with County and State requirements and that the Discharger has discussed and coordinated the proposal with Huhtamaki.
7. If any additional municipal or private wells are impacted from by the VOC plume emanating from the AmeriPride site, Regional Water Board staff will notify the Discharger that an alternate water supply is necessary. Within **30 days** of Regional Water Board staff notifying the Discharger that an alternate water supply is necessary, submit a Water Replacement Plan for the specified water supply. The Discharger shall provide uninterrupted replacement water of comparable quality and quantity to that pumped by the public water system or private well owner prior to the discharge of waste. The Discharger shall implement the approved Water Replacement Plan in accordance with an approved time schedule, which shall become part of this Order.

Supply Well Closure

8. By **15 November 2006**, properly abandon the Chinnet #1 and Chinnet #2 wells in compliance with County and State regulations and provide a technical report that the wells have been properly abandoned. Prior to abandonment of the two wells, the Discharger must: (1) determine the integrity of the casing and the location of well perforations, by completing a video log of each of the two wells, (2) perform thermal or mechanical spinner logging on both wells, and (3) collect groundwater samples from each screened zone of Chinnet #1 and analyze for VOCs, metals, general minerals and dissolved gases. Submit the results of these in-well surveys prior to

well abandonment to Regional Water Board staff and Sacramento County Environmental Health for permit considerations.

Groundwater Remediation

9. By **30 November 2006**, complete the installation of four observation wells and two extraction wells and aquifer pumping tests using the extraction and observation wells, and submit a Remedial Design for the proposed remedial system for Phase 1 cleanup. The design of the remedial system will be based on existing data and information gained from the installation of the four observation wells and two extraction wells and the aquifer tests.
10. By **1 January 2007**, submit a detailed Technical Disposal Alternatives Report analyzing all disposal alternatives for treated groundwater, including deep well injection, surface water and land disposal, reuse and any other viable disposal alternatives.
11. By **15 November 2007**, complete the start up of an extraction well(s) and treatment system for Phase 1 of OU3, to capture and clean up the toe of the plume to the laboratory detection limit for PCE of 0.5 µg/L.
12. By **1 February 2008 and annually thereafter**, as required in Monitoring and Reporting Program (MRP) No. R5-2003-0820, submit an Annual Report, which includes a description of the status of the groundwater remediation systems, evaluates the effectiveness of the remediation, and provides any plans to improve remediation system effectiveness.
13. By **1 May 2008**, submit a Remedial Action Plan for cleaning up the central part of the groundwater plume (Phase 2 of OU3). The Remedial Action Plan for OU3 Phase 2 must include the proposed remedial action to be taken, a revised groundwater model of the remedial system based on information from the operation of OU3 Phase 1 remedial system, method for treatment and discharge of extracted groundwater, a time schedule for completing the installation and starting up the system, including a public participation comment period.
14. By **1 July 2008**, submit a Remedial Design for cleanup of the OU3 Phase 2 remediation. The Remedial Design must include design specifications for Phase 2 remedial actions to complete cleanup of OU3.
15. Conduct monitoring of the existing wells and any additional wells in accordance with MRP No. R5-2003-0820 or any revised MRP issued by the Executive Officer, which is made part of this Order by reference.

Soil Gas Remediation

16. By **15 November 2006**, submit a Work Plan to install an adequate soil gas monitoring network to evaluate the effectiveness of the existing soil gas extraction system in removing contaminated soil gas from on-site and, if necessary, off-site soils. The Work Plan must include a time schedule for implementing an approved plan. The time schedule shall become part of this Order.
17. By **1 December 2006**, submit a technical report containing all soil gas investigation data and the results of the indoor air health risk assessment for the Zimmer Custom Made Packaging and the DHM facilities. This report shall include any proposed additional investigation or remediation, based on the interpretation of the data, and a time schedule which shall become part of this Order.

Public Participation


18. By **1 November 2006**, submit an updated *Public Participation Plan*. The *Public Participation Plan* shall solicit public input and disseminate information to the public regarding the investigation and proposed cleanup activities at the sites. The *Public Participation Plan* shall be updated as necessary to reflect any significant changes in the degree of public interest as the site investigation and cleanup process moves toward completion.

General Requirements

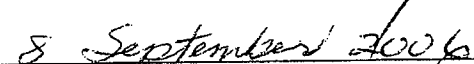
19. All feasibility studies and cleanup plans shall contain the information listed in Attachments 2 and 3, respectively, which are made part of this Order. Work shall be conducted only after the Regional Water Board staff notifies the Discharger that the work plan is consistent with this Order. All reports shall include a cover letter from the Discharger.
20. Fourteen days prior to conducting any field work, submit a Health and Safety Plan that is adequate to ensure worker and public safety during the field activities in accordance with Title 8 CCR, Section 5192.
21. As required by the California Business and Professions Code Sections 6735, 7835, and 7835.1, all reports shall be prepared by, or under the supervision of, a California registered professional engineer or geologist and signed by the registered professional. All technical reports submitted by the Discharger shall include a statement signed by the authorized representative certifying under penalty of law that the representative has examined and is familiar with the report and that to his knowledge, the report is true, complete, and accurate.

22. Upon startup of any remediation system(s), operate the remediation system(s) continuously, except for periodic and required maintenance or unpreventable equipment failure. The Discharger shall notify the Regional Water Board within 24 hours of any unscheduled shutdown of the remediation system(s) that lasts longer than 48 hours. This notification shall include the cause of the shutdown and the corrective action taken (or proposed to be taken) to restart the system. Any interruptions in the operation of the remediation system(s), other than for maintenance, emergencies, or equipment failure, without prior approval from Regional Water Board staff or without notifying the Regional Water Board within the specified time is a violation of this Order.
23. Notify Regional Water Board staff at least five working days prior to any fieldwork, testing, or sampling.
24. Obtain all local and state permits necessary to fulfill the requirements of this Order prior to beginning work.
25. Continue any remediation or monitoring activities until such time as the Executive Officer determines that sufficient cleanup has been accomplished and this Order has been rescinded.
26. Reimburse the Regional Water Board for reasonable costs associated with oversight of the cleanup of the site soils and groundwater emanating from the site. Failure to do so shall be considered a violation of this Order.
27. If, in the opinion of the Executive Officer, the Discharger fails to comply with the provisions of this Order, the Executive Officer may refer this matter to the Attorney General for judicial enforcement or may issue a complaint for administrative civil liability.

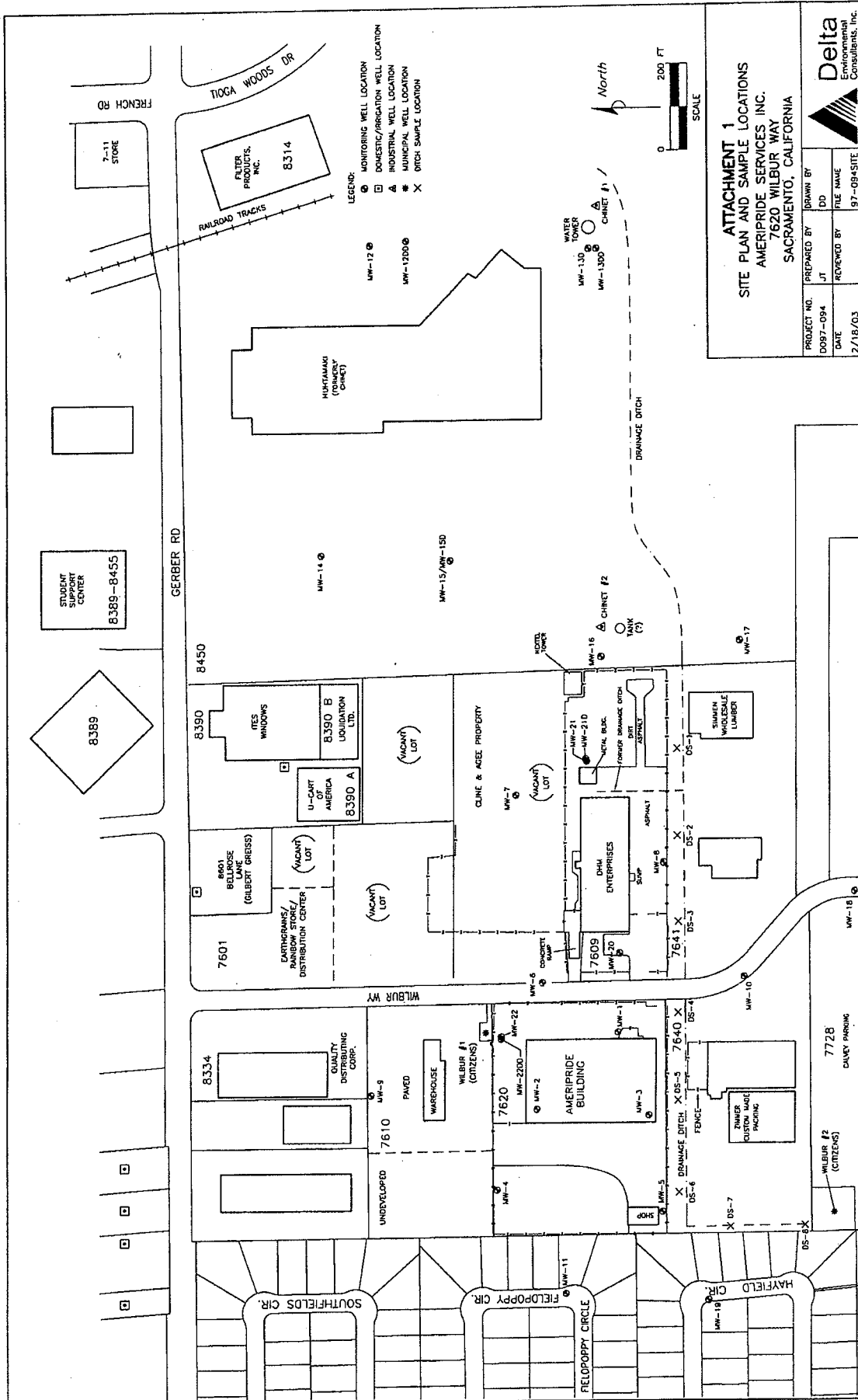
This Order is effective upon the date of signature.



PAMELA C. CREEDON, Executive Officer



Date



ATTACHMENT 1
SITE PLAN AND SAMPLE LOCATIONS
AMERIPRIDE SERVICES INC.
7620 WILBUR WAY
SACRAMENTO, CALIFORNIA

PROJECT NO.	PREPARED BY	DRAWN BY
D097-094	JT	DD
DATE	REVIEWED BY	FILE NAME
2/18/03		97-094-SITE



ITEMS TO BE INCLUDED IN A FEASIBILITY STUDY/REMEDIAL OPTIONS EVALUATION REPORT

The outline below is a minimum requirement for items to be included and discussed in the text of all feasibility studies/remedial option evaluation reports submitted to the Board. Reports must be signed by a registered geologist, certified engineering geologist, or civil engineer registered or certified by the state of California.

- I. Purpose of Feasibility Study/Remedial Options Evaluation
- II. Background
 - A. Description of Facility
 - B. Site History
 - 1. Years of Operation
 - 2. Chemical Use
 - 3. Chemical Releases (Potential and Documented)
 - C. Geology
 - 1. Regional
 - 2. Local, soil type, lithology, lateral extent of lithologic units
 - D. Hydrogeology
 - 1. Aquifers, Aquitards, Perched Aquifers
 - 2. Groundwater flow rates, directions, recharge, discharge
 - 3. Groundwater Use
 - 4. Extraction and injection wells affect on groundwater flow
 - E. Surface Water
 - 1. Losing or gaining streams, ponds etc.
 - 2. Hydraulic connection with aquifers
 - F. Local Land Use
 - G. Previous Investigation and Remedial Actions
- II. Nature and Extent of Contamination
 - A. Contaminants in Soils
 - 1. Types and Concentrations
 - 2. Lateral and Vertical Extent
 - B. Pollutants in Groundwater
 - 1. Types and Concentrations
 - 2. Lateral and Vertical Extent (including Perched Zones)
- III. Contaminant Fate and Transport
 - A. Contaminant Properties
 - 1. Mobility
 - 2. Toxicity

- 3. Half-life
 - 4. Chemical and biological degradation
- B. Contaminant Transport based on Soil and Aquifer Properties
- IV. Remedial Action Objectives
- V. Description of Remedial Action Alternatives – at a minimum, 3 alternatives must be considered
 - A. Alternative that meets background levels
 - B. Alternative that meets water quality objectives
 - C. Alternative that meets levels between background and water quality objectives
- VI. Evaluation of Remedial Action Alternatives
 - A. Overall Protectiveness of Human Health and the Environment
 - B. Compliance with Laws and Regulations
 - C. Long Term Effectiveness and Permanence
 - D. Reduction of Toxicity, Mobility, and Volume
 - E. Short Term Effectiveness
 - F. Implementability
 - G. Cost
 - F. State and Community Acceptance
- VII. Potential Impacts of Remedial Actions
- VIII. Estimated Project Schedule for Each Alternative
- IX. Preferred Alternative

ITEMS TO BE INCLUDED IN A CLEANUP PLAN

The outline below is a minimum requirement for items to be included and discussed in the text of all cleanup plans submitted to the Regional Board. All reports must be signed and stamped by a registered geologist, certified engineering geologist, or civil engineer registered or certified by the State of California. Other pertinent information specific to each individual investigation also should be included.

I. INTRODUCTION

- A. Site Assessment and characteristics
 - Site Background
 - Site description and location
 - Site history
 - Historic and current operations conducted at the site correlated to site contamination
 - Existing and planned use of the site
 - Present and historic chemical usage and handling procedures
 - Site geology and hydrogeology
 - Condition of surface and/or subsurface soil
 - All previous investigations with reference to relevant documents
- B. Nature and Extent of Soil and Groundwater Contamination
 - 1. Constituents and concentrations, including background concentrations
 - 2. Lateral and vertical extent
 - 3. Site maps to show above, including locations of any groundwater monitoring wells relative to soil and groundwater contamination

II. SUMMARY OF SELECTED REMEDIATION ALTERNATIVE

- Discussion of selected remedial alternative
- Discussion of implementation of remedial alternative
- Summary of field activities
- Summary of bench-scale testing
- Summary of aquifer testing
- Remedial investigation results
- Summary of remedial goals
- Compliance with Federal and State regulations, if applicable

III. TREATMENT SYSTEM DESIGN AND IMPLEMENTATION

- Conceptual Model/Remedial Design
- Overview
- Equipment selection and operation
- System schematics (layout, instrumentation, and controls)
- Treatment processes
- Construction activities and utility requirements

- Operation, maintenance and performance monitoring
- Start-up sampling and performance monitoring
- Sampling and analysis plan to demonstrate system effectiveness,
performance optimization, and long-term operation with respect to
achieving cleanup goals
- Potential for off-site migration
- Emission and discharge controls
- Handling and disposal procedures
- Quality assurance/quality control plan

IV. CLOSURE AND POST-CLOSURE MONITORING

- Cleanup Strategy
- Field sampling plan for closure and post-closure monitoring
- Long-term operation and maintenance of remedial action measures, if any are
needed

V. TIME SCHEDULE FOR IMPLEMENTATION AND REPORTING

**APPENDIX B
TO PETITION FOR REVIEW**



Linda S. Adams
Secretary for
Environmental
Protection

Central Valley Region

Robert Schneider, Chair

Sacramento Main Office
11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114
Phone (916) 464-3291 • FAX (916) 464-4645
<http://www.waterboards.ca.gov/centralvalley>

P.01/19



Arnold
Schwarzenegger
Governor

28 June 2006

CERTIFIED MAIL # 7006 0100 0000 5887 0626

Ms. Rojean Rada
AmeriPride Services, Inc.
10801 Wayzata Blvd.
Minnetonka, MN 55305

**DRAFT CLEANUP AND ABATEMENT ORDER, AMERIPRIDE SERVICES, INC., AND
VALLEY INDUSTRIAL SERVICES, INC., 7620 WILBUR WAY, SACRAMENTO,
SACRAMENTO COUNTY**

Enclosed is a draft Cleanup and Abatement Order (Order) for investigation and cleanup of soil and groundwater polluted with volatile organic compounds (VOCs) emanating from AmeriPride Uniform Services, 7620 Wilbur Way, Sacramento. The Order also requires replacement water supply for water supply wells polluted by the VOC plume.

By 28 July 2006, please submit your comments on the draft Order.

If you have any questions, you may call Susan Timm at (916) ~~256-3057~~.

464-4657

Cori Condon
Senior Engineering Geologist

Enclosure

cc: on following page

cc with enclosure

Mr. Joe Peter, AmeriPride Services Inc., Minnetonka, MN
Mr. Jeff Thuma, Delta Environmental Consultants, Inc., St. Paul, Minnesota
Ms. Rochelle B. Stringer, De Soto, Kansas
Mr. Steve Darmody, Shook, Hardy and Bacon, Miami, FL

cc without enclosure:

Mr. Kenneth Pogue, Attorney General's Office, Sacramento
Ms. Frances McChesney, OCC, State Water Resources Control Board, Sacramento
Mr. Carl Lischeske, Department of Health Services, Sacramento
Mr. Jim Carlisle, Office of Environmental Health Hazard Assessment, Sacramento
Mr. Mark Loutzenhiser, Sacramento Metropolitan Air Quality Management District, Sacramento
Mr. Barry Marcus, Sacramento County Environmental Management Department, Sacramento
Mr. Glen Del Sarto, Sacramento Regional County Sanitation District, Sacramento
Mr. Lee Smith, Stoel Rives, LLP, Sacramento
Mr. John Poulos, Pillsbury Winthrop, LLP, Sacramento
Mr. Phillip R. Scaletta, Ice Miller, Indianapolis, Indiana
Mr. Mike Thomas, Downey, Brand, Seymour & Rohwer, LLP, Sacramento
Mr. Mark D. Anstoetter, Shook, Hardy & Bacon, Kansas City, Missouri
Mr. Mitch Dion, California American Water Company, Sacramento
Mr. David Cooke, Allen, Matkins, Leck, Gamble & Mallory, San Francisco
Mr. Andy Gremos, Keramida Environmental, Inc., Indianapolis, Indiana
Mr. Dave Brown, Zimmer Custom Made Packaging, Sacramento
Mr. Joe Niland, Geomatrix, Rancho Cordova
Mr. Joseph Turner, Brown and Caldwell, Sacramento
Mr. Michael Fernandez, TOSC, Corvallis, Oregon

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER NO. R5-2005-XXXX
FOR

AMERIPRIDE SERVICES, INC., AND
VALLEY INDUSTRIAL SERVICES, INC.
7620 WILBUR WAY, SACRAMENTO
SACRAMENTO COUNTY

This Order is issued to AmeriPride Services, Inc. (AmeriPride) and Valley Industrial Services, Inc., (hereafter collectively referred to as Discharger) based on provisions of California Water Code Section 13304, which authorizes the Central Valley Regional Water Quality Control Board (hereafter Water Board) to issue a Cleanup and Abatement Order.

The Water Board finds, with respect to the Discharger's acts or failure to act, the following:

BACKGROUND

1. AmeriPride owns and operates an industrial laundry under the name AmeriPride Uniform Services on its property at 7620 Wilbur Way (hereafter referred to as the site) in Sacramento, Sacramento County. The site encompasses approximately 4.6 acres, as shown on Attachment 1, which is made part of this Order. Also shown on Attachment 1 are the locations of monitoring wells and water supply wells affected or potentially affected by the tetrachloroethylene (PCE) groundwater plume, which emanates from the site.
2. Valley Industrial Laundry constructed the original industrial laundry facility at the site in the mid-1960s. The original facility was approximately 16,000 square feet in size. Valley Industrial Laundry performed laundry-cleaning services including dry cleaning and water washing. In 1972, Valley Industrial Laundry transferred all of its assets to Valley Industrial Services, Inc., a newly created, wholly owned subsidiary of Valley Industrial Laundry. Petrolane, Inc., a California corporation, then purchased the stock of Valley Industrial Services, Inc. in exchange for Petrolane stock. As a result of this 1972 transaction, Valley Industrial Services, Inc. became a wholly owned subsidiary of Petrolane, Inc.
3. In 1980, the facility building was expanded to approximately double its size.
4. In 1983, Petrolane sold all California laundry facilities, including the site, to Mission Industries. Because of anti-trust concerns raised by the federal government, Mission Industries sold the site to Welch's Overall Cleaning Company, Inc. (Welch's) within days of acquiring the site.

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AMERIPRIDE SERVICES, INC AND VALLEY INDUSTRIAL SERVICES, INC.
7620 WILBUR WAY
SACRAMENTO, SACRAMENTO COUNTY

5. Welch's operated the facility until 31 December 1998 when Welch's was merged into AmeriPride, its parent company. Welch's and AmeriPride expanded the facility, adding a total of approximately 21,000 square feet in 1990 and 2000.
6. Although Valley Industrial Laundry and/or Valley Industrial Laundry, Inc., and Valley Industrial Services, Inc. may have dissolved, during their existence they had insurance policies that, if located, may provide coverage related to this Order. As former owners of the site and operators of the laundry facility, these entities caused or permitted waste to be discharged to waters of the state where it has created and threatens to create a condition of pollution or nuisance.
7. The dry-cleaning solvent, PCE, reportedly was used at the site from the early 1960s to 1982.
8. AmeriPride is in litigation with other parties to determine, as between the parties to the litigation, responsibility to pay for cleanup.
9. According to State Board precedent and pursuant to California Water Code Section 13304, AmeriPride, as the current owner of the site, is a responsible party.
10. In 1997, during remodeling work, AmeriPride detected volatile organic compounds (VOCs), including PCE and trichloroethylene (TCE), in near-surface soil beneath the site at concentrations up to 7,800 micrograms per kilogram ($\mu\text{g}/\text{kg}$) and 69 $\mu\text{g}/\text{kg}$, respectively. AmeriPride conducted additional soil investigations including passive soil gas sampling, Geoprobe[®] soil boring sampling, and soil vapor extraction (SVE) pilot tests to determine the extent of the PCE in soil gas and possible soil cleanup alternatives. SVE wells were installed prior to expansion of the building and have since been connected to an SVE remediation system. The SVE system has been operating intermittently since 14 August 2003.
11. AmeriPride conducted a series of groundwater investigations to determine the lateral and vertical extent of PCE, and its degradation products, TCE and cis-1,2 dichloroethylene (cis-1,2 DCE) pollution. The groundwater PCE plume extends approximately 2,000 feet laterally in the downgradient direction (to the east) and to depths in excess of 200 feet below ground surface (bgs). The maximum PCE, TCE and cis-1,2 DCE concentrations detected in groundwater during October 2002 were 11,000 microgram per liter ($\mu\text{g}/\text{L}$) PCE in monitoring well MW-1, 220 $\mu\text{g}/\text{L}$ TCE in monitoring wells MW-1 and MW-20, and 750 $\mu\text{g}/\text{L}$ cis-1,2 DCE in monitoring well MW-20.
12. Unsaturated soils beneath the site consist of laterally and vertically variable silts, clays and silty sands underlain by a relatively continuous layer of sand and gravel with cobbles up to 30 feet thick. Groundwater is first encountered immediately below the sand/gravel/cobble layer at a depth of approximately 75 feet bgs. Saturated sediments consist of inter-bedded fine- and course-grained materials to

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AMERIPRIDE SERVICES, INC AND VALLEY INDUSTRIAL SERVICES, INC.
7620 WILBUR WAY
SACRAMENTO, SACRAMENTO COUNTY

depths of greater than 600 feet bgs. Groundwater flow at all of the depths monitored for plume definition is generally to the east/northeast; however, groundwater flow directions are influenced by pumping wells screened in various zones within the aquifer system.

13. Several municipal and domestic supply wells are located within the vicinity of the site, as shown on Attachment 1. In August 2001, PCE was detected in groundwater at a concentration of 78 µg/L in the California-American Water Company (Cal-Am) Wilbur #1 municipal supply well, which was on the northeast boundary of the site. During peak summer demand in 2001, the Wilbur #1 well was pumped at 900 gallons per minute. The Wilbur # 1 well was screened below 426 feet bgs. The PCE detection was confirmed in November 2001 and the Wilbur #1 well was taken off line on 15 November 2001. On 21 January 2003, the California Department of Health Services (DHS) advised Water Board staff that, in accordance with DHS Policy Memo 97-005, wellhead treatment would not be allowed on the Wilbur #1 well until full compliance with the policy can be demonstrated. Cal-Am discontinued use of the Wilbur #2 well on 16 December 2001, due to the proximity to the PCE plume, even though PCE has not been detected in the Wilbur #2 well using a detection limit of 0.5 µg/L.
14. In August 2001, PCE was detected at a concentration of 0.60 µg/L in the Chinnet #1 supply well, which is approximately 1,800 feet east of the site. The Chinnet #1 well supplied process and drinking water to the Huhtamaki facility (formerly Chinnet), a paper plate processing plant. At that time Huhtamaki changed its water system so that drinking water in the plant was supplied by a municipal source and the well water was used only as process water. The concentration of PCE in this well has continually increased since PCE was first detected. The most recent water quality data available to the Water Board for the Chinnet #1 showed a detection of 2.9 µg/L PCE on 15 October 2002.
15. Sacramento County Environmental Management Department (County) was the lead regulatory agency until February 2002, when the County referred the site oversight to the Water Board.
16. In April 2002, PCE was detected in the Chinnet # 2 supply well at 14 µg/L. This well was historically used as a backup water supply and a source of fire protection water for the Huhtamaki facility.
17. AmeriPride submitted the *Draft Remedial Investigation/Feasibility Study (RI/FS)*, dated 31 May 2002, that included remedial alternatives for source area soil and groundwater polluted with PCE. On 31 July 2002, Water Board staff sent AmeriPride comments on the draft RI/FS which, in par, requested that AmeriPride submit: (1) by 30 August 2002 a work plan to implement the proposed alternatives for soil (soil vapor extraction) and groundwater (extraction and treatment) remediation in the source area, and (2) by January 2003 a site-wide RI/FS for

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AMERIPRIDE SERVICES, INC AND VALLEY INDUSTRIAL SERVICES, INC.
7620 WILBUR WAY
SACRAMENTO, SACRAMENTO COUNTY

cleanup of the entire groundwater plume to background levels.

18. On 28 August 2002, AmeriPride agreed to undertake the actions as described in Finding 17.
19. On 30 August 2002, Huhtamaki informed Water Board staff that, due to the PCE levels in the Chinnet wells, it would have to discontinue use of these wells.
20. In a 19 December 2002 letter, Water Board staff concurred with AmeriPride that site cleanup would be broken into separate operable units (OUs) for cleanup of soil and groundwater. In subsequent documents, AmeriPride refers to the contaminated soil in the source area as OU1, the groundwater polluted with PCE at concentrations greater than 1,000 micrograms per liter ($\mu\text{g/L}$) as OU2, and the remainder of the PCE plume as OU3.
21. On 14 January 2003, Water Board staff agreed that due to the time necessary to properly design a treatment system for the SVE remedy, AmeriPride would not be able to complete and submit the site-wide groundwater RI/FS in January 2003. A new date was not proposed at that time.
22. On 25 April 2003, the Water Board adopted Resolution No. R5-2003-0058 approving the *Remedial Action Work Plan* for OU1 and adopted *Cleanup and Abatement Order No. R5-2003-0059*. The Cleanup and Abatement Order required the comprehensive site-wide groundwater RI/FS be submitted on 20 June 2003.
23. On 27 May 2003, AmeriPride filed a petition with the State Water Resources Control Board requesting reconsideration and a stay of *Cleanup and Abatement Order No. R5-2003-0059*.
24. On 20 June 2003, AmeriPride submitted an RI/FS to Water Board staff proposing groundwater extraction, treatment and discharge to cleanup groundwater in the source area (OU2) and groundwater extraction with wellhead treatment from the Chinnet #1 production well to cleanup the remainder of the plume (OU3).
25. On 8 July 2003, the State Water Resources Control Board dismissed the request for a stay of Cleanup and Abatement Order No. R5-2003-0059.
26. On 14 August 2003, in compliance with *Cleanup and Abatement Order No. R5-2003-0059*, AmeriPride began soil remediation with soil vapor extraction in OU1.
27. On 12 September 2003, Water Board staff concurred with the portion of the 20 June 2003 RI/FS for Groundwater in which AmeriPride proposed to remediate OU2. Water Board staff requested that AmeriPride submit a revised RI/FS with an alternative for cleanup of OU3 without the use of the Chinnet #1 well as an extraction well. In this letter, Water Board staff requested that AmeriPride submit, by 9 October

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AMERIPRIDE SERVICES, INC AND VALLEY INDUSTRIAL SERVICES, INC.
7620 WILBUR WAY
SACRAMENTO, SACRAMENTO COUNTY

2003, a remedial action work plan for OU2 and a schedule to complete the tasks necessary to prepare a revised RI/FS for cleaning up OU3.

28. On 2 October 2003, the Water Board issued Monitoring and Reporting Program R5-2003-0820 to require sampling and analyses of groundwater to delineate pollutant plumes and determine if remediation efforts are effective.
29. In its 8 October 2003 letter, AmeriPride proposed submitting a revised RI/FS for OU3 on 7 June 2004. AmeriPride requested that when reviewing the revised RI/FS, Water Board staff reconsider the use of the Chinnet #1 to cleanup the distal portion of the plume and as replacement water for Huhtamaki.
30. On 3 March 2004, the State Water Resources Control Board dismissed AmeriPride's Petition for Reconsideration of *Cleanup and Abatement Order No. R5-2003-0059*.
31. On 2 April 2004, AmeriPride filed a petition for writ of mandate with the Sacramento County Superior Court of the State of California to stay any further implementation of *Cleanup and Abatement Order No. R5-2003-0059* and to "overturn the CAO, in particular the requirements for alternate water supplies to be provided for the Cal-Am/Wilbur wells and the Huhtamaki/Chinnet wells, and that AmeriPride be relieved of the requirement of investigating the source of well contamination in Wilbur 1."
32. On 15 October 2004, AmeriPride submitted the *Remedial Investigation/Feasibility Study Report: Downgradient Ground Water*, which recommended cleanup of OU3 using the Chinnet #1 well as an extraction well, treating the extracted groundwater with activated granulated carbon and providing the treated water to the Huhtamaki facility as replacement water supply.
33. On 18 March 2005, Water Board staff commented on the 15 October 2004 RI/FS and included reasons why the use of the Chinnet #1 well was unacceptable. Water Board staff again requested that AmeriPride submit a revised RI/FS that proposed alternatives for cleanup of OU3 without the use of the Chinnet #1 well.
34. On 15 April 2005, AmeriPride submitted a letter response to Water Board staff's letter dated 18 March 2005 refuting staff conclusions that use of the Chinnet #1 as an extraction well to cleanup the VOC plume was unacceptable. AmeriPride agreed, however, to revise the RI/FS and submit the revised document on 18 September 2005.
35. In a 12 August 2005 letter, Water Board staff restated that use of the Chinnet #1 as an extraction well would not be an effective or an acceptable means of cleaning up the polluted groundwater. Extraction from the Chinnet #1 would draw clean water into the extraction well from deeper, unpolluted water-bearing zones and would require that highly polluted groundwater be drawn laterally into less polluted and possibly unpolluted zones. Since the first intake screen in the Chinnet #1 well is at 168 feet

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ORDER AND ABATEMENT ORDER NO. R5-2003-0059
AMERIPRIDE SERVICES, INC AND VALLEY INDUSTRIAL SERVICES, INC.
7620 WILBUR WAY
SACRAMENTO, SACRAMENTO COUNTY

below ground surface (bgs) and the zones of highest pollution are approximately between 85 feet bgs and 110 feet bgs, extraction from this well would require that the polluted groundwater be pulled across several low permeability layers. The low permeability layers would retard the downward movement of the groundwater and adsorb PCE to the clay sediments. In the 12 August letter, Water Board staff also stated, "AmeriPride is scheduled to start up its source area groundwater remediation system no later than November 2005. The hydrogeologic information gained by the vertical investigation boring in the distal portion of the plume and during the first few months of extraction in the source area should be used to recalibrate the groundwater model and assist in determining optimal placement of the extractions wells for the downgradient groundwater cleanup, extraction well screen depths and the appropriate pumping rate to capture the entire VOC plume." Water Board staff requested that, by 2 January 2006, AmeriPride submit a revised RI/FS for OU3 using the additional hydrogeologic information from the distal boring and the source area extraction to recalibrate the groundwater model.

36. After mediation on 2 November 2005, without admitting liability, AmeriPride filed on November 3, 2005, a request with the Superior Court of California to dismiss its petition for writ of mandate challenging Cleanup and Abatement Order No. R5-2003-0059.
37. Wilbur Well #1 was video logged on 26 September 2005 and was abandoned on 5 December 2005.
38. On 15 December 2005, AmeriPride submitted a draft Water Supply Well Replacement Work Plan to provide permanent water replacement for Huhtamaki. Water Board staff commented on the draft Work Plan and, on 15 February 2006, AmeriPride submitted a draft final Water Supply Replacement Work Plan.
39. In December 2005, AmeriPride began groundwater remediation in OU2 using extraction and treatment technology.
40. On 15 January 2006, AmeriPride submitted a revised draft RI/FS for cleanup of OU3. Water Board staff submitted a comment letter that AmeriPride, by 28 April 2006, submit an addendum to the RI/FS or resubmit the draft final RI/FS which fully addresses all the Water Board comments including; (1) a conceptual design to address cleanup of the entire VOC plume, (2) a proposal to provide full capture and treatment of the toe of the plume, (3) an updated groundwater model run for various agreed upon scenarios using hydrogeologic information from the source area remediation system and (4) a proposal to delineate the entire VOC plume to the 0.5 µg/L contour.
41. Tasks required in Cleanup and Abatement Order No. R5-2003-0059 which have not been accomplished as of the date of this Order are as follows:

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AMERIPRIDE SERVICES, INC AND VALLEY INDUSTRIAL SERVICES, INC.
7620 WILBUR WAY
SACRAMENTO, SACRAMENTO COUNTY

- To provide in-kind replacement water for the Huhtamaki facility.
- To provide a plan to determine how PCE entered the Chinnet #1 well.
- To determine if the Wilbur #2 presents a conduit for downward migration of polluted groundwater.
- To submit an acceptable comprehensive Remedial Investigation/Feasibility Study for cleanup of the remainder of the plume (OU3).

42. On 2 November 2005, in a mediation meeting between the Water Board staff and AmeriPride, the two parties agreed to revise *Cleanup and Abatement Order No. R5-2003-0059*. Revised Cleanup and Abatement Order No. R5-2005-0721 was issued on 21 December 2005, which included those items agreed upon between the two parties and other provisions necessary to cleanup and abate the effects of pollution caused by activities conducted at the 7620 Wilbur Way facility.

43. Specifically, AmeriPride agreed, without admitting liability, to comply with a revised Order incorporating the following requirements and dates:

- To cleanup and capture the entire PCE plume within a reasonable amount of time consistent with State Water Resources Control Board Resolution 92-49.
- Not to petition the State Water Resources Control Board challenging the revised Order and not to challenge the revised Order in court.
- To dismiss the petition for writ of mandate filed in the Superior Court of California by AmeriPride, *AmeriPride Services, Inc. v. Central Valley Regional Water Quality Control Board*, Sacramento County Superior Court Case No. 04CS00426.
- By 15 December 2005, provide Water Board staff with a technical report outlining how it will provide replacement water for Huhtamaki. This report will include an analysis of all aspects of the replacement water process, including, but not limited to, location, permitting, storage, conveyance, volume, quality, and scheduling. AmeriPride will implement the schedule in the approved technical report for replacement water. The schedule will become part of this Order.
- By 15 January 2006, submit to the Water Board a final RI/FS for cleanup of the PCE plume. The RI/FS will include a refined site model for an extraction and treatment scenario to capture and cleanup of the entire PCE plume to the non-detect contour incorporating all available pumping data (including December 2005 data).

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AMERIPRIDE SERVICES, INC AND VALLEY INDUSTRIAL SERVICES, INC.
7620 WILBUR WAY
SACRAMENTO, SACRAMENTO COUNTY

- By 15 February 2006, provide the Water Board with a final detailed technical report for providing replacement water to Huhtamaki responsive to Water Board comments.
- By 15 June 2006, properly abandon the Chinnet #1 and Chinnet #2 wells and provide proof that the wells have been properly abandoned. Prior to abandonment, video logs of the two wells must be completed and submitted to Water Board staff.
- By 15 September 2006, provide in kind replacement water to Huhtamaki. In kind replacement water will be consistent with California Water Code Requirements.
- By 1 January 2007, complete installation of a groundwater extraction system to capture and cleanup the toe of the plume to non detect VOC levels. The system shall include a monitoring well network to confirm capture and cleanup to these levels.

44. Huhtamaki filed a petition with the State Board challenging Cleanup and Abatement Order No. R5-2005-0721 and the State Board found that due to the provisions in the Order, revised Order No. R5-2005-0721 is not in effect.

45. AmeriPride submitted a 19 May 2006 RI/FS that incorporates comments from the Water Board on the 19 January 2006 draft RI/FS for OU3. Water Board staff advised AmeriPride that implementation of OU3 remediation may be performed in phases. Phase 1 is containment and cleanup of the toe of the plume to the 0.5 µg/L VOC contour. Phase 2 is cleanup of the entire VOC plume. The plume toe containment can be performed as a time critical Removal Action. Since the plume toe containment proposal will be evaluated in the RI/FS, a separate Engineering Evaluation/Cost Analysis (EE/CA) will not be necessary. The RI/FS portion addressing any time critical Removal Action shall contain sufficient detail to satisfy any EE/CA requirements. Since it will be a time critical Removal Action, a public comment period will not be necessary for that portion of the RI/FS.

46. By complying with this revised Order, AmeriPride makes no admission of fault or liability for pollution to soil and/or groundwater. This Order is intended to replace and supercede Cleanup and Abatement Orders No. R5-2003-0059 and No. R5-2005-0721 issued by the Water Board Executive Officer, which would be rescinded 30 days from the date of issuance of this Order if AmeriPride does not petition the State Water Resources Control Board or file other legal actions challenging this Order.

47. Permanent replacement supply for Wilbur #1 and Wilbur #2 has been settled in a Settlement Agreement between California-American Water Company, AmeriPride Services, Inc., and Petrolane, Incorporated. The Settlement Agreement required AmeriPride to pay \$2,000,000.00 to Cal-Am and that "Within ten business days of

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ORDER AND ABATEMENT ORDER NO. 03-2000-XXXX
AMERIPRIDE SERVICES, INC AND VALLEY INDUSTRIAL SERVICES, INC.
7620 WILBUR WAY
SACRAMENTO, SACRAMENTO COUNTY

receipt of the Settlement Payment, Cal-Am shall represent by letter to the [Water] Board that, insofar as Cal-Am is concerned, AmeriPride has satisfied the requirements of the CAO that AmeriPride and Valley Industrial Services, Inc. provide in-kind replacement of water supplies lost from the Wilbur Way Wells [Wilbur #1 and Wilbur #2 water supply wells]." This letter from Cal Am was received on 21 September 2005.

48. Huhtamaki is utilizing water purchased from the Cal-Am as an interim water supply. Huhtamaki has filed a lawsuit against AmeriPride to recover damages due to the loss of the use of Chinet #1 and Chinet #2 wells.
49. This Order requires AmeriPride to construct its proposed supply well to provide permanent replacement water for the Huhtamaki facility by 15 September 2006, and requires AmeriPride to pay Huhtamaki for continued use of its interim supply if the replacement well is not completed and operational by 15 September 2006.

AUTHORITY – LEGAL REQUIREMENTS

50. Section 13304(a) of the California Water Code provides that:

Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts. A cleanup and abatement order issued by the state board or a regional board may require the provision of, or payment for, uninterrupted replacement water service, which may include wellhead treatment, to each affected public water supplier or private well owner. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

51. Section 13304(f) of the California Water Code provides that:

Replacement water provided pursuant to subdivision (a) shall meet all applicable federal, state, and local drinking water standards, and shall

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AMERIPRIDE SERVICES, INC AND VALLEY INDUSTRIAL SERVICES, INC.
7620 WILBUR WAY
SACRAMENTO, SACRAMENTO COUNTY

have comparable quality to that pumped by the public water system or private well owner prior to the discharge of waste.

52. Section 13267(b)(1) of the California Water Code provides that:

In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

53. Section 13304(c)(1) of the California Water Code provides in pertinent part that:

[T]he person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of the waste within the meaning of subdivision (a), are liable to that government agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial action....

54. The State Water Resources Control Board (State Board) has adopted Resolution No. 92-49, the *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under California Water Code Section 13304*. This Policy sets forth the policies and procedures to be used during an investigation or cleanup of waste and requires that cleanup standards be consistent with State Board Resolution 68-16, *Statement of Policy with Respect to Maintaining High Quality of Waters in California* (the antidegradation policy). Resolution 92-49 and the *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, 4th Edition* (hereafter Basin Plan) establish the cleanup levels to be achieved. Resolution 92-49 requires the waste to be cleaned up to background, or if that is not reasonable, to an alternative level that is the most stringent level that is economically and technologically feasible in accordance with Title 23 California Code of Regulations Section 2550.4. Any cleanup level alternative to background must, (1) be consistent with the maximum benefit to the people of the state; (2) not unreasonably affect present and anticipated beneficial use of such water; and (3) not

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AMERIPRIDE SERVICES, INC AND VALLEY INDUSTRIAL SERVICES, INC.
7620 WILBUR WAY
SACRAMENTO, SACRAMENTO COUNTY

result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Board.

55. Chapter IV of the Basin Plan contains the *Policy for Investigation and cleanup of contaminated Sites*, which describes the Water Board's strategy for managing contaminated sites. This strategy is based on California Water Code Sections 13000 and 13304, the Title 27, Division 2, subdivision 1 regulations, and State Water Board Resolutions Nos. 68-16 and 92-49. The strategy includes site investigation, source removal or containment, information required to be submitted for consideration in establishing cleanup levels, and the bases for establishment of soil and groundwater cleanup levels.

56. The State Water Board adopted the Water Quality Enforcement Policy, which states in part:

At a minimum cleanup levels must be sufficiently stringent to fully support beneficial uses, unless the RWQCB allows a containment zone. In the interim, and if restoration of background water quality cannot be achieved, the CAO should require the discharger(s) to abate the effects of the discharge. Abatement activities may include the provision of alternate water supplies. (Enforcement Policy, p. 19.)

57. The Water Board's Basin Plan designates beneficial uses of the waters of the State, establishes water quality objectives (WQOs) to protect these uses, and establishes implementation policies to implement WQOs. The beneficial uses of the groundwater beneath the site are domestic, municipal, industrial, and agricultural supply

58. The wastes detected at the site are solvents used in the dry cleaning process and breakdown products that are not naturally occurring, and some are known human carcinogens. Pollution of groundwater with PCE, TCE and cis-1,2 DCE impairs the beneficial uses of the groundwater.

59. WQOs listed in the Basin Plan include numeric WQOs, e.g., state drinking water maximum contaminant levels (MCL) that are incorporated by reference, and narrative WQOs, including the narrative toxicity objective and the narrative tastes and odors objective for surface and groundwater. The numeric limits for the constituents of concern listed in the following table implement the Basin Plan WQOs.

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SECOND AND ABATEMENT ORDER NO. 2000-0001
AMERIPRIDE SERVICES, INC AND VALLEY INDUSTRIAL SERVICES, INC.
7620 WILBUR WAY
SACRAMENTO, SACRAMENTO COUNTY

Constituent	Limits	WQO	Reference
PCE	0.06 µg/L ¹	Narrative Toxicity	California Public Health Goal in Drinking Water – Office of Environmental Health Hazard Assessment
TCE	0.8 µg/L	Narrative Toxicity	California Public Health Goal in Drinking Water – Office of Environmental Health Hazard Assessment.
cis-1,2 DCE	6 µg/L	California Primary Maximum Contaminant Level	CCR Title 22, Section 64444 California Department of Health Services

¹µg/L—Micrograms per liter

60. The constituents listed in Finding 59 are wastes, as defined in the California Water Code, Section 13050. The groundwater exceeds the WQOs for the constituents listed in Finding 11. The exceeding of applicable WQOs in the Basin Plan constitutes pollution as defined in California Water Code Section 13050(1)(1).

DISCHARGER LIABILITY

61. As described in Findings 11, 58, 59 and 60, the Discharger is subject to an order pursuant to California Water Code Section 13304 because the Discharger has caused or permitted waste to be discharge or deposited where it has discharged to waters of the state and has created, and continues to threaten to create, a condition of pollution or nuisance. The condition of pollution is a priority violation and issuance or adoption of cleanup and abatement order pursuant to California Water Code Section 13304 is appropriate and consistent with policies of the Water Board.
62. This Order requires investigation and cleanup of the site in compliance with the California Water Code, applicable portions of the Basin Plan, Resolution 92-49, and other applicable plans, policies, and regulations. As described in Finding 52, the discharger is subject to an order pursuant to California Water Code Section 13267 to submit technical reports because existing data and information about the site indicate that waste has been discharged, is discharging, or is suspected of discharging, at the property, which is or was owned and/or operated by the Discharger named in the Order. The technical reports required by this Order are necessary to assure compliance with Section 13304 of the California Water Code, including to adequately investigate and cleanup the site to protect the beneficial uses of waters of the state, to protect against nuisance, and to protect human health and the environment.

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AMERIPRIDE SERVICES, INC AND VALLEY INDUSTRIAL SERVICES, INC.
7620 WILBUR WAY
SACRAMENTO, SACRAMENTO COUNTY

63. If the Discharger fails to comply with this Order, the Executive Officer may request the Attorney General to petition the superior court for the issuance of an injunction.
64. If the Discharger violates this Order, the Discharger may be liable civilly in a monetary amount provided by the California Water Code.
65. The issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.), pursuant to Title 14, California Code of Regulations (CCR), Section 15321(a)(2). The implementation of the Order is also an action to assure the restoration of the environment and is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 210000, et seq.) in accordance with Title 14, CCR, Sections 15308 and 15330.
66. Any person affected by this action of the Water Board may petition the State Water Board to review the action in accordance with Title 23, CCR, Sections 2050-2068. The State Water Board must receive the petition within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request and are available at www.swrcb.ca.gov.

REQUIRED ACTIONS

IT IS HEREBY ORDERED that, pursuant to Section 13300, Section 13304 and Section 13267 of the California Water Code, AmeriPride Services, Inc. and Valley Industrial Services, Inc. (collectively, "Discharger") shall:

1. Investigate, clean up the waste, and abate the effects of the discharges of waste, forthwith, at 7620 Wilbur Way, Sacramento, in conformance with the State Board's Resolution No. 92-49 *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304* and with the Water Board's *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins* (in particular the Policies and Plans listed within the Control Action Considerations portion of Chapter IV). "Forthwith" means as soon as is reasonably possible. Compliance with this requirement shall include, but not be limited to, completing the tasks listed below and shall include those actions necessary to investigate, clean up and abate the effects of discharges of waste that have emanated from 7620 Wilbur Way beyond the property boundaries. This Order is intended to replace and supercede Cleanup and Abatement Order No. R5-2003-0059 and Order No. R5-2005-0721, which will be rescinded 30 days from the date of adoption of this Order if the Discharger does not petition the State Water Resources Control Board or file other legal actions challenging this Order.

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Water Supply Replacement

2. By **15 June 2006**, submit a revised *Final Water Supply Well Replacement Work Plan* (Work Plan) which addresses Water Board comments on the 15 February 2006 *Final Water Supply Well Replacement Work Plan* and includes an implementation schedule. The schedule shall become a part of this Order upon concurrence by the Water Board staff.
3. By **15 September 2006**, complete the work to provide in-kind permanent replacement water to Huhtamaki in accordance with the Water Board approved work plan and consistent with Water Code requirements. If permanent replacement water facilities are not completed and operational by 15 September 2006, AmeriPride shall monetarily compensate Huhtamaki for the cost to purchase interim replacement water until the permanent replacement water supply is operational.
4. Take additional measures if: (a) monitoring shows that VOCs were drawn into clean water during drilling of or as a result of the construction of the replacement well or observation wells, (b) the plume is being impacted by pumping the replacement supply well, or (c) the well replacement does not provide the capacity, quality and quantity of water it was designed for. These measures could include additional cleanup of groundwater at depth, drilling a new water supply well in a different location; providing an alternative water supply with adequate quantity and quality to replace the water supply provided by the Chinnet #1 and Chinnet #2 wells; or other measures as appropriate.
5. Implement the replacement water supply work according to the approved time schedule.
6. If any proposed long-term action requires Department of Health Services or County of Sacramento approval prior to implementation, the Work Plan shall demonstrate that the action will comply with County and State requirements and that the Discharger has discussed and coordinated the proposal with Huhtamaki.

Supply Well Closure

7. By **15 July 2006**, properly abandon the Chinnet #1 and Chinnet #2 wells in compliance with County and State regulations and provide a technical report that the wells have been properly abandoned. Prior to abandonment of the two wells, the Discharger must: (1) determine the integrity of the casing and the location of well perforations, by completing a video log of each of the two wells, (2) perform video logging and thermal or mechanical spinner logging on both wells, and (3) collect groundwater samples from each screened zone of Chinnet #1. Submit the results of these in-well surveys prior to well abandonment to Water Board staff and Sacramento County Environmental Health for permit considerations.

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Groundwater Remediation

8. By **14 July 2006**, submit a *Groundwater Remedial Action Work Plan* that describes the chosen alternative(s) for Phase 1 of the groundwater remediation plan for OU3 and includes a time schedule, design specifications, including any necessary access agreements to conduct the remediation, and a proposal for a groundwater monitoring network to define the horizontal and vertical extent of the plume to the 0.5 µg/L PCE contour and to ascertain that the remediation systems are cleaning up the plume as required. The approved time schedule to implement the groundwater remediation shall become a part of this Order.
9. By **1 January 2007**, complete the installation and start up of an extraction well(s) and treatment system to capture and clean up the toe of the plume to the laboratory detection limit for PCE of 0.5 µg/L.
10. Within **120 days** of implementing the *Groundwater Remedial Action Plan*, submit a *Groundwater Remediation Implementation Report*, which describes the status of the groundwater remediation system and assesses the effectiveness of the remediation.
11. By **1 September 2006**, submit a Comprehensive Groundwater Remedial Design Work Plan for remediating the entire groundwater plume (Phase 2). The Comprehensive Groundwater Remedial Design Work Plan must include a time schedule and design specifications for Phase 2 remedial actions to complete cleanup of OU3.
12. Conduct monitoring of the existing wells and any additional wells in accordance with MRP No. R5-2003-0820 or any revised MRP issued by the Executive Officer.

Soil Gas Remediation

13. By **1 August 2006**, implement soil gas investigation to determine the nature and extent of soil gas contamination south and east of the AmeriPride property.
14. By **15 November 2006**, implement an adequate soil gas monitoring network to evaluate the effectiveness of the existing soil gas extraction system in removing contaminated soil gas from on-site and off-site soils.

Public Participation

15. By **1 July 2006**, submit an updated *Public Participation Plan*. The *Public Participation Plan* shall solicit the public's concerns and disseminate information to the public regarding the investigation and proposed cleanup activities at the sites. The *Public Participation Plan* shall be updated as necessary to reflect any significant

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changes in the degree of public interest as the site investigation and cleanup process moves toward completion.

General Requirements

16. If a court makes a final determination that any entity not named as a "Discharger" in this Order is the agent or alter ego of a Discharger, or is otherwise liable for the acts or omissions of a Discharger that caused or permitted the discharges of waste that are the subject of this Order, the Executive Officer shall revise this Order to name that entity as a "Discharger."
17. All feasibility studies and cleanup plans shall contain the information listed in Attachments 2 and 3, respectively, which are made part of this Order. Work shall be conducted only after the Water Board staff notifies the Discharger that the work plan is consistent with this Order. All reports shall include a cover letter from the Discharger.
18. Fourteen days prior to conducting any field work, submit a Health and Safety Plan that is adequate to ensure worker and public safety during the field activities in accordance with CCR Title 8, Section 5192.
19. As required by the California Business and Professions Code Sections 6735, 7835, and 7835.1, all reports shall be prepared by, or under the supervision of, a California registered professional engineer or geologist and signed by the registered professional. All technical reports submitted by the Discharger shall include a statement signed by the authorized representative certifying under penalty of law that the representative has examined and is familiar with the report and that to his knowledge, the report is true, complete, and accurate.
20. Upon startup of any remediation system(s), operate the remediation system(s) continuously, except for periodic and required maintenance or unpreventable equipment failure. The Discharger shall notify the Water Board within 24 hours of any unscheduled shutdown of the remediation system(s) that lasts longer than 48 hours. This notification shall include the cause of the shutdown and the corrective action taken (or proposed to be taken) to restart the system. Any interruptions in the operation of the remediation system(s), other than for maintenance, emergencies, or equipment failure, without prior approval from Water Board staff or without notifying the Water Board within the specified time is a violation of this Order.
21. Periodically, but at least annually, evaluate the remedial systems and optimize remedial systems and report on the effectiveness of the optimization in the Annual Report.
22. Notify Water Board staff at least five working days prior to any fieldwork, testing, or sampling.

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23. Obtain all local and state permits necessary to fulfill the requirements of this Order prior to beginning work.
24. Continue any remediation or monitoring activities until such time as the Executive Officer determines that sufficient cleanup has been accomplished and this Order has been rescinded.
25. Reimburse the Water Board for reasonable costs associated with oversight of the cleanup of the site soils and groundwater emanating from the site. Failure to do so shall be considered a violation of this Order.
26. If, in the opinion of the Executive Officer, the Discharger fails to comply with the provisions of this Order, the Executive Officer may refer this matter to the Attorney General for judicial enforcement or may issue a complaint for administrative civil liability.

This Order is effective upon the date of signature.

PAMELA C. CREEDON, Executive Officer

Date

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**APPENDIX C
TO PETITION FOR REVIEW**

Stephen J. Darmody

August 3, 2006

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VIA EMAIL, FAX, AND FEDEX

Antonia K.J. Vorster
Supervising Engineer
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114

Re: Response to AmeriPride's Comments on the Technical Data for Chinnet #1 and
Chinnet #2 Replacement Wells

Dear Ms. Vorster:

This letter responds to two letters AmeriPride recently submitted regarding its duty to replace two Chinnet wells impacted by PCE contamination.

As an initial matter, Huhtamaki objects to the additional delays sought by AmeriPride to complete the well installation plan. AmeriPride has been under an obligation to provide replacement water to Huhtamaki since 2003. All the while, Huhtamaki has been paying approximately \$30,000 each month to purchase replacement water. Huhtamaki does not believe that AmeriPride should now be allowed to announce a new date by which it may meet its obligation. If the Regional Board believes that AmeriPride needs additional time to install a replacement well, it should require that AmeriPride bear the cost of purchasing replacement water until the replacement well is installed. Allowing AmeriPride to dictate the terms by which it might obey a Cleanup and Abatement Order (CAO) will only encourage further delay.

1. Access to Huhtamaki's Property

Huhtamaki believes that Mr. Alger's statement that the well replacement plan could not be initiated because of "access issues" is a distraction. The Regional Board is well aware that rather than engaging in a constructive discussion with Huhtamaki regarding access, AmeriPride has repeatedly made baseless accusations in letters sent to the Regional Board. The tone of these letters proves them to be litigation tactics that warrant no substantive attention by the Regional Board. The fact is that Huhtamaki is eager to have this work accomplished and envisions no problem with giving AmeriPride access to implement work approved by the Regional Board.

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Antonia K.J. Vorster
August 3, 2006
Page 2

The situation with access for the replacement well(s) is the same as it was for OU3. After years of delay and appeals, when the Regional Board's order finally became enforceable against AmeriPride, Huhtamaki sent a signed access agreement to AmeriPride before its workplan for OU3 was approved. This draft access agreement mirrored the agreement both parties had used for inspections in the pending federal litigation. On July 21, 2006, AmeriPride for the first time forwarded a draft agreement that will, when executed, give AmeriPride access to install a replacement well on Huhtamaki's property. That agreement is currently under review and Huhtamaki anticipates no problem in reaching agreement well before a workplan is approved by the Regional Board.¹ Once the red herring of access is removed, Huhtamaki believes that the best way to ensure quick action is for the Regional Board to order that AmeriPride immediately begin supplying Huhtamaki with an interim water supply. When purchasing water becomes more expensive than replacing Huhtamaki's wells, Huhtamaki believes AmeriPride will act. Absent such a requirement, Huhtamaki believes the Regional Board is likely to encounter further delays

2. Huhtamaki's Response to Delta's Technical Comments

Delta Environmental's comment letter does nothing to change the data that were presented by Huhtamaki in its May 25, 2006 letter. However, each of AmeriPride's specific technical comments is addressed in Attachment "A" to this letter.

As to water quality, Huhtamaki believes that Delta has inaccurately represented the data in a manner that suggests that the presence of elevated levels of manganese, iron and methane in lower levels of the aquifer—as compared to upper levels—is not a generally known phenomena in the Sacramento region. Because the PCE plume precludes the use of water drawn from the same level as it was previously, AmeriPride should be responsible for addressing the effects of pumping water from lower levels, including the elevated levels of these naturally present elements.

¹ Huhtamaki is nevertheless obligated to point out that AmeriPride has recently argued in papers filed with the federal court that AmeriPride's previous testing of the Chinnet Wells, performed under the direction of Delta Environmental with the goal of delineating the reach of the contaminant plume, has made Huhtamaki a responsible party under CERCLA. Such tactics unfortunately place a strain on the trust between parties and make working relationships difficult. Despite this abuse of access previously granted by Huhtamaki, Huhtamaki is still willing to provide AmeriPride with access to its property but intends to require that any activity undertaken by AmeriPride have been previously approved by the Regional Board and be carefully supervised by Huhtamaki. This requirement should apply to any further testing of the Chinnet wells in particular.

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3. Huhtamaki's Response to Comments on Iris Environmental's Responses to the Regional Board's Comments

Antonia K.J. Vorster
August 3, 2006
Page 3

In addition to Mr. Alger's statements regarding delays in AmeriPride's efforts to install a replacement well due to access, he has made several substantive points with which Huhtamaki disagrees. Each of Huhtamaki's responses is addressed in Attachment "B" to this letter. However, Huhtamaki specifically notes that Mr. Alger's suggestion that changing from well water to a municipal supply would be as easy as flipping a switch is simply not true. A redundant water supply was important to Huhtamaki when it acquired the Sacramento property, and there are substantial differences in the process chemistry when municipal water is used as compared to well water. A switch from one source to another requires a complicated effort to balance the process chemistry in a way that allows Huhtamaki to maintain the consistent quality of its products.

Further, Huhtamaki believes that it is unacceptable for AmeriPride to continue to imply that it will install a well constructed of mild steel. The well constructed by AmeriPride should be a well that meets accepted standards for construction in 2006, rather than the standards common in 1961. This revised proposal is frustrating to Huhtamaki because previous versions of Iris's plan proposed the use of higher quality materials (specifically, stainless steel type 316), suggesting that it is indeed the customary practice to do so. The recent insistence on lower quality materials appears to be nothing more than an effort to begin negotiations with a low cost proposal.

4. Huhtamaki's Response to Legal Challenge to Replacement Water

AmeriPride has also argued without reference to any legal authority that the Water Code only allows the Regional Board to order replacement water in the amount of drinking water used before the Chinnet wells became contaminated by AmeriPride's discharges. The Regional Board knows this is not true. Water Code Section 13304, which was amended in 2004 to encourage the Regional Boards to more frequently order replacement water supplies, is not limited in scope to drinking water supplies. It reads in relevant part:

A cleanup and abatement order issued by the state board or a regional board may require the provision of, or payment for, uninterrupted replacement water service, which may include wellhead treatment, to each affected public water supplier or private well owner.

Water Code § 13304(a) Further, the Water Code provides that water provided by a discharger pursuant to this section

shall meet all applicable federal, state, and local drinking water standards, and shall have comparable quality to that

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pumped by the public water system or private well owner
prior to the discharge of waste.

Antonia K.J. Vorster
August 3, 2006
Page 4

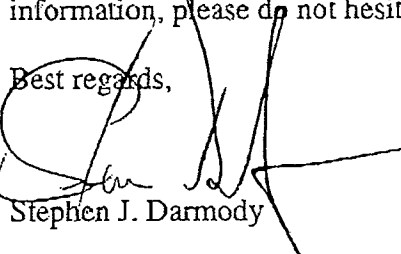
Water Code § 13304(f). This language does not limit the power of the Regional Board to provide replacement water only for drinking water purposes. It only provides that if drinking water supplies are provided, those alternative supplies must meet all applicable regulatory standards. More broadly, the law requires that any replacement water supplies that the Regional Board may order should be of "comparable quality" to the water pumped prior to the discharge. Thus, this language is not limited to providing drinking water supplies as AmeriPride suggests.

While no court has interpreted the scope of Water Code Section 13304 since its recent amendment, the State Board, in Order WQ 2005-0007, *In the Matter of the Petitions of Olin Corporation and Standard Fusee, Inc.*, considered a Petition arguing that replacement drinking water should only be provided when the well detections have exceeded the public health goals for a contaminant—in that case perchlorate. The State Board determined that "affected" wells under this statute were those impacted above the applicable regulatory standards. However, the State Board also took care to note that this Order "applies only to replacement drinking water and not to replacement water for other potentially affected beneficial uses." That is, the State Board carefully pointed out that this provision allows replacement water to be ordered for uses other than drinking water, and even in circumstances where detections are currently less than the drinking water standards.² Given the broad language of Water Code Section 13304 and the recent State Board interpretation of this provision, it appears to be difficult for AmeriPride to argue that the Regional Water Board can only order replacement water supplies that are to be used for drinking water and not to produce food contact products.

Conclusion

Huhtamaki looks forward to discussing these issues with you at the meeting currently scheduled for the afternoon of August 15th. If you have any questions or need additional information, please do not hesitate to contact me.

Best regards,


Stephen J. Darmody

Attachments

²

It also bears note that the State Board also clarified that this Order "does not prevent a regional board from requiring any action that is related directly to remediation of ground water or is necessary to prevent migration of waste through ground water."

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Antonia K.J. Vorster
August 3, 2006
Page 5

Copy: Mr. Steve Carlton
Kenneth Pogue, Esq.
Lee Smith, Esq.
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ATTACHMENT A

Responses to June 27, 2006 Comments from Delta Environmental Consultants, Inc. to the Technical Data for Chinet #1 and Chinet #2 Replacement Wells

On behalf of Huhtamaki Foodservices, Inc. ("Huhtamaki"), the following provides specific responses to the Delta Environmental Consultants, Inc. (Delta) comments, dated June 27, 2006 regarding the technical Data by Huhtamaki regarding the Chinet #1 and Chinet #2 Replacement Wells. The Delta comments have been summarized (in italics), and are followed by the Huhtamaki responses.

Delta Comment #1 – Well Construction: *Huhtamaki does not provide the present well specification, but rather states the capacity is 1,500 gallons per minute (gpm) based on pump curves provide by Munz Pumps. There are various site-specific operational considerations that would result in a decrease in total delivered water, including static head, frictional head loss, and drawdown head loss.*

Huhtamaki Response #1 – Extensive data were provided on the performance of the Chinet wells which directly address this comment. Appendix A to the May 25, 2006 Huhtamaki letter included the "Water Well Driller's Report" for Chinet #1. The well was tested by Wilson Pumps and had a yield of 2,057 gpm with 98.1 feet of drawdown, for a specific capacity of 21 gpm/foot of drawdown (gpm/ft). The well is constructed using 16-inch casing with eight perforation intervals totaling 108 feet: the shallowest interval is 168 to 176 feet below ground surface (bgs) and the deepest is 506 to 517 feet bgs. When tested by Wilson Pump, the well produced about 19 gpm per foot of perforation. Huhtamaki installed Fairbanks, Morse & Co. pumps (documentation also included in Appendix A) that are listed for Chinet #1 as "1500 GPM VS 250 TDH @ 1750 RPM" and for Chient #2 as "1500 GPM VS 227 TDH @ 1750 RPM". TDH is the abbreviation for total dynamic head. TDH is the sum of vertical lift and frictional head loss in piping, therefore, static head, drawdown head, and frictional head loss were accounted for in the pump specification.

Delta Comment #2 – Well Performance: *Operation of the wells for more than 40 years has resulted in a decrease in overall performance of the wells and the pumps. The stated system capacity is not representative of the actual capacity when the well was impacted.*

Huhtamaki Response #2 – AmeriPride has not produced any information that Chinet #1 or Chinet #2 are operating at production rates less than 1,500 gpm. But it has filed a counter claim in federal court contending that the mere pumping of the Chinet wells has exacerbated the PCE plume emanating from AmeriPride's property. AmeriPride has also argued in papers filed with the court that prior sampling done at the direction of Delta Environmental and under the auspices of the clean-up ordered by the Regional Board, has made Huhtamaki a liable party under CERLCA. Given these litigation tactics, Huhtamaki is not inclined to allow AmeriPride and/or Delta to test the wells for the purpose they have desdibed. Therefore, Huhtamaki will assume that the well pumps are capable of producing 1,500 gpm. In the alternative, AmeriPride could assume that the wells are capable of actually producing 2,057 gpm, as was also proven by earlier testing.

Delta Comment #3 – Information Inconsistency: *The pump curves are dated November 20, 1961 and the well construction logs are dated July 8 and July 10, 1963. Please explain this discrepancy.*

Huhtamaki Response #3 – The wells were installed by Eaton Drilling Company. Huhtamaki has learned that it was not uncommon for Eaton to collect a stack of Water Well Driller's Reports prior to submitting the information to the California Department of Water Resources, often waiting months prior to filling out the forms. It seems likely that delay by the driller in filing the forms is the source of the discrepancy. That is, it appears Eaton waited two years to submit the paper work. To verify this assumption, Huhtamaki checked the Chinnet #1 and Chient #2 pumps to verify the pump manufacturer and operational information. In fact, the pumps motor drives were manufacture by Fairbanks, Morse & Co., and the Chinnet #1 is listed as "14LC" with 4 stages, and Chinnet #2 is listed as "12LC" with 4 stages. Therefore, confirming Huhtamaki's knowledge of Eaton's practices, the motors appear to be consistent with the 1961 invoices and it appears as if the well driller reports were submitted two years after well installation.

Delta Comment #4 – Water Demand Calculation: *The Maximum Water Demand (MWD) appears to have been calculated based on Average Water Demand (AWD) for the years 1995, 1997, 1998, 1999, and 2000. The annual multipliers were averaged for overall use. The explanation for the multiplier calculation is not clear.*

Huhtamaki Response #4 – The water demand data are presented in Appendix B: a combination of sewer flow rates and fresh water flow rates (well water) were provided. Monthly average well water flow rates were provided for 1991, 1992, and 1994. Daily well water flow rates were provided for all or portions of 1994, 1995, 1996, 1997, 1998, 1999, and 2000. As was stated in the May 25, 2006 letter, while this data set is substantial, it is not complete. For instance, only sewer records are available for the months of March, July, August and September in 2000 and July of 1999. For these months, actual water usage was estimated by comparing the difference between water usage and sewer discharges in other months of 2000 and 1999 respectively. Also, only 19 days of pumping data were available for 1996. Further, pumping records were only available for the first eight months of 1995, and for only the first eleven months of 1997, 1999 and 2000. Huhtamaki does not have access to this missing data, but believes that the available data are sufficient to demonstrate historical water supply usage. The average demand rate (in gpm), maximum demand rate, and demand multiplier for 1994, 1995, 1997, 1998, 1999, and 2000 are tabulated below.

Year	1994	1995	1997	1998	1999	2000
AWD (gpm)	731	586	369	285	231	255
MWD (gpm)	1,563	1,188	903	556	472	500
Multiplier	2.14	2.03	2.44	1.95	2.04	1.96

The average of the six multipliers is 2.1, or the MDW equals 2.1 times the ADW.

Delta Comment #5 – Water Demand Projections: *Projecting the multiplier for low water use years to earlier years is probably not valid.*

Huhtamaki Response #5 – Application of the average multiplier to earlier years, with higher AWD, does appear to be reasonable: it appears that the lowest flow years (1998, 1999, and 2000) are on the low end for the multiplier the range. Further, the application of the 2.1 multiplier appears to be a reasonable approximation.

Delta Comment #6 – Water Demand Joint Operation: *There is no information that Chinet #2 was used for anything more than backup.*

Huhtamaki Response #6 – Chinet #2 was used for more than backup. The 1994 MWD was 1,563 gpm on July 5. If it is assumed that Chinet #1 and Chient #2 operated at a maximum of 1,500 gpm, which AmeriPride and Delta argue is too high a number, then the additional 90,000 gallons used on July 5 would have to come from Chinet #2. Looking at the MWD projections for 1991, 1992, and 1993 the shortage would have been 1,002,000 gallons, 894,000 gallons, and 501,000 gallons. It seems very likely that Chinet #2 was operating to provide water on maximum demand days in 1991, 1992, and 1993, even without the actual MWD data.

Delta Comment #7 – Water Demand Water Storage: *The MWD does not consider the storage of water in the water tower.*

Huhtamaki Response #7 - The water tower holds 125,000 gallons. This is not sufficient volume to address the MWD in 1991, 1992, and 1993. Further, only 25,000 gallons is available for domestic/manufacturing use, and the remaining 100,000 gallons is reserved only for fire suppression.

Delta Comment #8 – Water Quality Data Manganese, Methane, and Iron: For this comment the Delta text is copied verbatim: *The letter states that the data indicate that the replacement well must "... provide water with no contaminants of any sort – including manganese, methane, and iron...". However, the data indicate that there was a detection of manganese in the Chinet #1 well, and methane has not been analyzed for in the Chinet wells.*

Huhtamaki Response #8 - This is a blatantly misleading comment on the data Huhtamaki produced, as this section of the Huhtamaki letter addresses a completely separate point: deeper wells in the vicinity (screened in intervals similar as those proposed by AmeriPride), specifically Larchmont wells operated by Cal-Am, have required expensive treatment systems for elevated levels of methane, iron, and manganese. Huhtamaki will acknowledge that the May 13, 1998 sample had manganese at 20 micrograms per liter (ug/L), which is less than the state and federal MCL of 50 ug/L. Huhtamaki will also acknowledge that the water has not been tested for methane. However, the point for this section of the letter is, existing deeper completed water supply wells in the vicinity need expensive treatment systems for

manganese, iron, and methane, and if treatment is required, AmeriPride is responsible for treatment costs. This problem with iron, manganese and methane is well known for wells at this depth in Sacramento, and conversely, it is well known that no such problem exists from well at the depth of Chinet #1 and Chinet #2.

ATTACHMENT B

Responses to June 21, 2006 Response Comments from Iris Environmental to the Regional Water Quality Control Board letter, dated April 19, 2006.

On behalf of Huhtamaki Foodservices, Inc. ("Huhtamaki"), this document provides responses to the Iris Environmental ("Iris") response comments, dated June 21, 2006. Iris provided comments to the Central Valley Regional Water Quality Control Board ("Regional Board") letter dated April 19, 2006 regarding the replacement water supply well work plan for the two Chinnet wells. The Iris comments have been summarized (in italics), and are followed by the Huhtamaki responses.

This response from Iris covers four issues, and each will be discussed separately:

- Replacement well location with respect to horizontal plume movement;
- Iris conceptual model and PCE vertical movement;
- Well construction methods.

Iris Comment #1 – Replacement well location with respect to horizontal plume movement. While the replacement well completion depth is greater than 700 feet below ground surface ("bgs"), location of the replacement well on the western, northern, or eastern side of the Huhtamaki plant would place the replacement well more within the path of the tetrachloroethylene ("PCE") plume, and thus are not considered appropriate alternative locations.

Huhtamaki Response #1 – First of all, this comment presumes that only one well will be constructed. As the Regional Board knows, water supply redundancy was an important feature of the Huhtamaki plant prior to the contamination of the Chinnet wells. Also in regard to this comment, the distribution of the PCE plume in the interval from ground surface to 213 feet bgs would appear to have little impact on a well completed 700 feet bgs, based on existing data. Does AmeriPride have additional depth discrete sampling data for the interval from 213 to 700 feet bgs that would suggest PCE contamination will impact groundwater at depths greater than 700 feet?

Iris Comment #2 – Conceptual model and PCE vertical movement – Our current conceptual model assumes that historical detections of PCE in Chinnet #1 was the results of downward intra-well migration between screen intervals between screen intervals. Given the historical sampling data for wells MW-13D and MW-13DD, it is reasonable to assume that little to no PCE mass remains in the vicinity of the upper 250 feet of aquifer.

Huhtamaki Response #2 – Huhtamaki does not believe that the conceptual model should "assume" any detections of PCE were the result of intra-well migration. Although it is not explicitly stated, this comment implies that there was previously PCE in the upper 250 feet of the aquifer at or in the vicinity of Chinnet